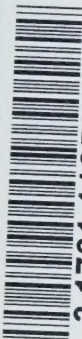


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ENVIRONMENTAL ASSESSMENT BOARD

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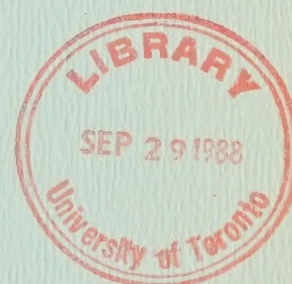
September 16th, 1988

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Friday, September 16th,
1988, commencing at 8:30 a.m.

VOLUME XLVIII

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

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MS. K. MURPHY)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
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MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
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	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
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MR. S.M. MAKUCH)	
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MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

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NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
233	Package of interrogatories filed by CELA.	8208
234	Article appearing in June, 1988 edition of Forestry Chronicle, entitled: Conference Sponsored by the Ministry of Natural Resources on Forestry and Wildlife Management in the Boreal Forest, Ontario Workshop.	8216
235	Photocopy page of list of rare vascular plants in Ontario.	8239
236	Article entitled: Wildlife Management for Non-Consumptive Use.	8258

1 ---Upon commencing at 8:40 a.m.

2 THE CHAIRMAN: Good morning, ladies and
3 gentlemen. Please be seated.

4 Ladies and gentlemen, as you are aware,
5 we are going to commence this morning's proceedings
6 with entertaining any points of clarification with
7 respect to the Board's procedural rulings issued in
8 draft form yesterday.

9 I understand -- I was advised this
10 morning that the last page of the copies that were
11 handed out did not come out properly on the photocopy
12 machine and I have additional copies of page 11 here
13 that I think we should hand out at this point to those
14 who do not have it.

15 Perhaps, Mr. Campbell, if you would do us
16 the honour. In addition, I have extra copies of the
17 entire draft ruling here as well for any people in the
18 room that did not receive a copy yesterday.

19 Very well, ladies and gentlemen, the
20 Board is now prepared to hear from counsel regarding
21 any items contained in the ruling which you feel
22 require some clarification.

23 As we mentioned yesterday, the Board has
24 spent considerable time formulating these rulings, that
25 is the cause of the delay in them not having been

1 issued until this time, and we are not prepared to
2 entertain any substantive submissions or argument
3 concerning the rulings themselves.

4 There may be areas, however, that you
5 wish to have clarified in terms of what does the
6 particular ruling mean if it has not been stated
7 clearly and we are certainly prepared to try and
8 clarify any of those types of questions.

9 It is the Board's intention this morning
10 to finalize the rules, taking into account any matters
11 which come up today and issue the rulings in final form
12 later today. And they will, of course, be sent out to
13 those on the parties list at the appropriate time.

14 So I think if any counsel wish to address
15 the Board on matters contained in the rulings, you can
16 do so at this time.

17 Mr. Freidin?

18 MR. FREIDIN: In relation to page 8, as
19 this order may be relied upon by people who are not
20 here as to what is going to happen, I am just wondering
21 whether it would be advisable to just add a paragraph,
22 a sub-paragraph in 3 to indicate that we will in fact
23 be reconvening on November the 1st. I realize that we
24 all understand that knowing the original schedule, but
25 just as a matter of clarification I would suggest that

1 that matter be considered.

2 On page 8 as well, just a comment in
3 relation to paragraph 2(b) which deals with the time
4 that the Ministry of Natural Resources will have to
5 respond to written interrogatories, and I believe the
6 same time period is given to other people to respond to
7 interrogatories.

8 You have indicated you don't want to hear
9 any submissions on substantive matters and I am not
10 going to make any submissions in that regard, but I
11 would just like to advise that meeting that particular
12 15-day time period may become extremely difficult and
13 impossible in certain circumstances depending on the
14 number of interrogatories we get.

15 I have spoken to other counsel, we have
16 the same concern. I think what we can do is just leave
17 the order the way it is. We have been fairly flexible
18 in receiving things late, I think we will try -- if
19 everybody will just try to work within the rules, and
20 if there is a problem we will come back to the Board.

21 THE CHAIRMAN: That was certainly the
22 Board's intention. We realize we have condensed that
23 time period from what was previously in force and the
24 Board would like counsel to approach it on exactly that
25 basis. Try your best to adhere to this time schedule.

1 If there are particular problems with the
2 particular set of interrogatories, then the Board may
3 be spoken to at the appropriate time and we will deal
4 with it in that fashion.

5 Again, this time period fits in better in
6 terms of what the Board had in mind simply because that
7 will leave the ultimate time period for both submitting
8 of interrogatories and receiving them to a period of 55
9 days, if people wait until the last day upon which to
10 do everything. And that will accord, as well, with
11 those statements wherein the witness statement has to
12 be served at least 60 days prior to adducing evidence
13 before the Board at the hearing itself.

14 So that was part of the thinking of the
15 Board going to that time period.

16 MR. FREIDIN: I think I understand the
17 rationale now. I just wanted to bring that matter to
18 your attention.

19 THE CHAIRMAN: Okay.

20 MR. FREIDIN: Page 9.

21 THE CHAIRMAN: Page 9 in the first
22 paragraph (a), the fourth line under 5(a) should have
23 read with the OFIA/OLMA's first witness panel's
24 statement, so that it is not the panel itself that will
25 have been delivered.

1 MR. CASSIDY: Deliver the body.

2 THE CHAIRMAN: Sorry, go ahead.

3 MR. FREIDIN: If I could just have one
4 moment. In the case of 5(b), and I think the same
5 comments would apply to 6(c), the rule provides that
6 there are 40 days to ask interrogatories and an
7 additional 10 days if you receive multiple witness
8 statements. Was that intended to be 10 days additional
9 for each?

10 THE CHAIRMAN: No, no. And this is one
11 of the areas that we thought you may require
12 clarification and maybe we will have to consider
13 wording it so that there is no doubt. But certainly
14 what the Board had in mind is, if you serve one witness
15 statement within a single 10-day period, then the
16 period is 40 days and 15 to answer the interrogatories.

17 But should you serve more than one in a
18 single 10-day period, then the parties receiving the
19 statements have an additional 10 days, not per
20 statement but an additional period of 10 days, and if
21 you served 3, which is a possibility under the schedule
22 in some months, then again the parties receiving would
23 be entitled to one additional period of 10 days, not 10
24 days per statement.

25 MR. FREIDIN: All right. You have

1 clarified the intent of the order. Again, if people
2 have problems with that and parties can't resolve the
3 difficulties we come back to the Board.

4 THE CHAIRMAN: Right. Obviously if
5 parties are going to receive more than one at a time on
6 the same day, they should be entitled to a little extra
7 time to be able to vet the second statement or even the
8 third statement, but we do not want a situation where
9 there is an additional 10 days for each statement that
10 they receive and I would suggest it is to the
11 proponent's advantage to stagger the delivery of the
12 statements because they will be faced with a problem on
13 the interrogatory side.

14 MR. FREIDIN: My concern was raised not
15 really because of the proponent not staggering them, I
16 am concerned about things such as paragraph 6
17 sub-paragraph (b) which indicates, it is on page 10,
18 that Forests for Tomorrow shall present its evidence
19 immediately following OFIA/OLMA and shall deliver its
20 witness statements to the Board and the parties
21 receiving full-time correspondence at least 60 days
22 prior.

23 That means all of its witness statements,
24 as I read it, and we have no idea of how many witness
25 panels Forests for Tomorrow will have, but I understand

1 their evidence could take four months plus, so I
2 anticipate that there will be a number of panels.

3 So that is going to cause some
4 difficulty. The way it is worded, it might very well
5 be that Forests for Tomorrow will not be able to
6 stagger the production of their witness statements in
7 the fashion indicated.

8 THE CHAIRMAN: Well, I hear what you are
9 saying.

10 MR. FREIDIN: It is going to cause
11 problems for both those receiving those witness panels
12 and for Mr. Castrilli's client.

13 THE CHAIRMAN: I have no idea how Mr.
14 Castrilli is planning, or Ms. Swenarchuk is planning to
15 deliver those statements down the road, but the idea
16 being that we want Forests for Tomorrow's witness
17 statements to be delivered in advance of their case.

18 We do not want to get into a situation
19 that we got into up to this point in time where the
20 parties are indicating they do not know what Forests
21 for Tomorrow's case is because they are getting the
22 witness statements delivered in a staggered fashion and
23 they do not have an overall picture.

24 We might well be under those
25 circumstances and back where we are today doing the

1 same kind of exercise. We realize there may be some
2 logistical problems concerning the delivery of
3 interrogatories and the Board will deal with those
4 problems should they arise at that time.

5 MR. FREIDIN: Okay. In terms of the
6 order dealing with Forests for Tomorrow, I guess I am
7 referring primarily to just paragraph 6, 6(a) and 6(b)
8 are premised on the assumption that Forests for
9 Tomorrow will follow the OFIA.

10 It is my understanding, Mr. Chairman,
11 that the Forests for Tomorrow, although they have not
12 indicated formally yet, that they are going to want to
13 call their evidence in Toronto. It is my understanding
14 that there is a possibility that other parties, parties
15 other than the Ministry of Natural Resources and OFIA,
16 will indicate to you that they wish to call some
17 evidence in Thunder Bay, and I am thinking primarily of
18 Mr. Hunter's comments earlier.

19 If that is the case, then I am asking --
20 well, the order would appear, if you agree to the
21 locations chosen, that we could very well have OFIA
22 have their case here, we go to Toronto and hear Mr.
23 Castrilli's clients and we would have to come back here
24 for Mr. Hunter's. I don't know whether that was
25 considered when you made the order.

1 THE CHAIRMAN: It was considered, albeit
2 briefly, but it is the Board's feeling that Forests for
3 Tomorrow should properly go first in terms of the
4 opposition, bearing in mind that that coalition
5 represents a wide range of interests and it is our hope
6 that the evidence that they will produce will assist,
7 to some extent, other parties in opposition.

8 And by that I mean, if Forests for
9 Tomorrow cover certain issues off in their
10 presentation, then other parties may decide that they
11 do not have to deal with it separately and some of the
12 other parties - Mr. Castrilli, I do not mean to say, by
13 any means, that you have all kinds of resources - but
14 some other parties have even less resources than
15 Forests for Tomorrow, because they certainly
16 participated in the funding side of this hearing.

17 And, as a result, we feel that Forests
18 for Tomorrow witness statements should be up front and
19 available to the other parties to see and that is one
20 reason why they are being asked to (a) go first and (b)
21 produce their statements in advance of the other
22 parties in opposition having to produce theirs.

23 Now, as far as the logistical problem of
24 moving back and forth, if that is the choice of Forests
25 for Tomorrow to have their evidence heard in Toronto,

1 we may just have to do that.

2 MR. FREIDIN: All right. I guess, as I
3 understand it, the parties are to indicate by the end
4 of this month where they would like to call their
5 evidence. If we have a big problem, maybe we can
6 address it at the end of the month or deal with it
7 later on.

8 THE CHAIRMAN: That is right. We will
9 certainly try and deal with the logistical problems but
10 it may just not be possible, given the fact that the
11 Board has given the parties in opposition the option to
12 call their evidence in one of 14 locations around the
13 province, to adjust it so that we finish with Thunder
14 Bay totally and never return.

15 It just may not work out that way and
16 that does not mean that we would not all like to return
17 to Thunder Bay on many future occasions.

18 MR. FREIDIN: I think I am going to take
19 my holidays here every year.

20 Those are my submissions.

21 THE CHAIRMAN: Thank you.

22 Mr. Castrilli?

23 MR. CASTRILLI: Yes, thank you, Mr.

24 Chairman.

25 I just have two submissions. Mr. Freidin

1 has already referred the panel to paragraph 6(a) and
2 6(b) of the Board's draft order, and as he has already
3 correctly identified, the order currently obligates my
4 clients to present our evidence immediately following
5 the OFIA's case. The concern I have, Mr. Chairman, is
6 that my understanding is that there are other parties
7 receiving full-time correspondence who are represented
8 by counsel who are in support of the MNR application.

9 My understanding from the first day of
10 hearings is that those parties include, in addition to
11 the OFIA, Kimberly-Clark, Spruce Falls, Boise Cascade,
12 all of whom are represented by counsel, Red Lake and
13 Ear Falls are also represented by counsel, and I
14 believe the Northwest Chamber of Commerce may or may
15 not be represented by counsel but, in any event, are in
16 support of the Ministry of Natural Resources'
17 application.

18 My understanding, Mr. Chairman, of the
19 Board's Rules of Practice and Procedure, Section 47, is
20 that the order of presentation of cases is as follows:
21 The applicant; those parties represented by counsel in
22 support; those parties not represented by counsel in
23 support; and only then those parties represented by
24 counsel who are in opposition.

25 Now, I don't recall this matter being

1 addressed during the arguments on the motions on
2 September 1st and on September 6th and if it had been I
3 would have been up vigorously arguing against having to
4 present my case prior to knowing the cases of the other
5 parties in support of the Ministry of Natural
6 Resources.

7 THE CHAIRMAN: Well, without going too
8 much further, I think that was an oversight on the part
9 of the Board. It was not the intention of the Board to
10 have you go in between OFIA and other parties in
11 support. We were sort of looking towards your
12 coalition being the first party in opposition to get
13 off the mark.

14 So I think the order in that sense should
15 be changed to read effectively at least 60 days prior
16 to the completion of the cases of any parties in
17 support of the proponent's application, which date will
18 be fixed by the Board, because it might be fairly
19 obvious to all of us at some point in the proceedings
20 when OFIA might finish and you could have a rough idea
21 of that, but I am not sure that you will know when all
22 these other parties finish because we do not have any
23 idea how lengthy their presentations will be.

24 So the Board will fix that date later on,
25 giving you as much notice as possible, so that you can

1 meet the 60-day time limitation.

2 Bearing that in mind, you should be
3 preparing your statements as you go along, realizing
4 that at some stage of the game you will be expected to
5 present all of your statements prior to presenting your
6 case in the 60-day interval.

7 MR. CASTRILLI: That is fine. I accept
8 the Board's proposed revision of, I guess it would be
9 paragraphs 6(a) and 6(b).

10 THE CHAIRMAN: Right.

11 MR. CASTRILLI: As so noted.

12 The only other submission I have, Mr.
13 Chairman, in that regard is just one really of
14 clarification and that is with respect to section
15 6(b) -- paragraph 6(b). And, again, Mr. Freidin
16 alluded to it and indicated what he believed his
17 understanding of the paragraph was, and I don't recall
18 what the Board's response was.

19 As the paragraph now reads, my clients
20 must deliver their witness statements to the Board and
21 parties receiving full-time correspondence at least 60
22 days prior to the completion of OFIA's case. Now, can
23 I take that what the Board means there is that all of
24 our witness statements must be filed prior to that
25 60-day period?

1 THE CHAIRMAN: Yes, and it will read as
2 we just discussed, 60 days prior to the end of the
3 parties in support.

4 MR. CASTRILLI: So that the paragraph --

5 THE CHAIRMAN: Sorry, we do mean all of
6 your statements instead of 60 days prior to the
7 presentation of each panel and, again, this is in the
8 interest of full disclosure so that the other parties
9 to the proceeding, including those in opposition, have
10 a clear idea of what your case is and what evidence you
11 are going to be relying upon.

12 MR. CASTRILLI: I was just wondering, Mr.
13 Chairman, if what you had meant in 6(b) was parallelism
14 with respect to Section 5(a) which is on the previous
15 page, page 9, and you will see there that OFIA must
16 distribute all of its witness statements to the Board
17 and parties receiving full-time correspondence prior to
18 the completion of MNR's case with the OFIA's first
19 witness statement having been delivered at least 60
20 days prior to the completion of MNR's case.

21 You clearly mean to treat my clients
22 differently, correct?

23 THE CHAIRMAN: Yes. The reason for 5(a)
24 is because the Board has rejected the idea that there
25 should be a gap in time between the end of the

1 proponent's case and the start of OFIA's case and,
2 therefore, we are suggesting that the first panel's
3 statement be delivered 60 days prior to the completion
4 of the proponent's case so that in that instance the
5 OFIA first witness panel can be called immediately
6 after the completion of the proponent's case.

7 Their witness statement will have been
8 delivered, interrogatories will have been posed and
9 answered on that panel and, therefore, that panel can
10 start off. And then by the completion of the
11 proponent's case all of the rest of OFIA's statements
12 will have been delivered.

13 Now, we have no idea how long the first
14 panel for OFIA is in fact going to be and perhaps
15 counsel for OFIA might advise us. We might have to
16 make this two witness panels 60 days ahead if you are
17 not going to be some time with the first panel.

18 We do not want a gap of 60 days or so of
19 downtime between the end of the proponent's case and
20 the start of OFIA's case.

21 Does counsel for OFIA have any idea how
22 long their first panel might take?

23 MR. TUER: No, that decision has not been
24 made, Mr. Chairman. I gather from the comments from
25 the Board, however, that...

1 THE CHAIRMAN: We are not asking you to
2 spend 60 days with the first panel either.

3 MR. TUER: That seems to be the carrot,
4 though. I will notify you of that decision.

5 THE CHAIRMAN: All right. It may be that
6 we will adjust that a little later once that decision
7 has been made so that OFIA may be required to produce
8 their first two witness statements 60 days prior to the
9 end of the proponent's case. Again, so we can start
10 off with the evidence immediately and then the rest of
11 your witness statements would be due by the end of the
12 proponent's case in accordance with that.

13 MR. CASTRILLI: Mr. Chairman, what I
14 wanted to suggest, because logistically I see
15 nightmares in the future for Ms. Swenarchuk in having
16 to produce anywhere from six to ten witness statements
17 all at once --

18 THE CHAIRMAN: Yes, they are due all at
19 once but you must bear in mind that you are going to
20 have a considerable number of months within which to be
21 think seriously about the preparation of those
22 statements.

23 We still have the rest of the proponent's
24 case, which I suggest will take some months, all of
25 OFIA's case which will take some period of time and

1 now, as you have pointed out today, three or four other
2 parties in support prior to your case being called.
3 And it may be difficult, but I would assume and the
4 Board would assume that you are not going to prepare
5 all of your witness statements on the night before they
6 are due.

7 MR. CASTRILLI: No, but what I was
8 wondering, Mr. Chairman -- no, not unless I was
9 prepared to go into a coma immediately thereafter.

10 What I was wondering, Mr. Chairman, is
11 whether the Board would contemplate a degree of
12 flexibility with respect to the requirement to file
13 them all within -- all pretty much at once such that we
14 could perhaps stagger them so that as long as all of
15 our witness statements were filed prior to the end of
16 the case in support of MNR, that meets the intent and
17 spirit of the Board's concern.

18 THE CHAIRMAN: We have made that
19 amendment. We are suggesting we make that amendment.
20 It will not be OFIA, it will be due at the end of all
21 of the parties in support's evidence.

22 MR. CASTRILLI: I recognize that. What I
23 am saying is: Would it be possible to contemplate the
24 staggering of our witness statements such that we
25 wouldn't necessarily have to file absolutely all of

1 them two months before the end of the case in support.

2 THE CHAIRMAN: But do you mean by
3 staggering them in advance of the end of those parties
4 in support so that they would all be in by the end of
5 those parties in support?

6 MR. CASTRILLI: Yes.

7 THE CHAIRMAN: That is no problem in
8 advance. We are worried the other way.

9 MR. CASTRILLI: Right. I clearly -- my
10 clients are clearly prepared to file all of our witness
11 statements before the end of the case -- cases of those
12 in support, it is just the requirements to file them at
13 least -- all of them 60 days before the end.

14 THE CHAIRMAN: I see what you mean.

15 MR. CASTRILLI: In other words, we are
16 looking for some parallelism to paragraph 5(a).

17 THE CHAIRMAN: Doesn't at least 60 days
18 cover your concern? It does not prevent you from
19 filing them now if you wanted to.

20 MR. CASTRILLI: True, but it would be, I
21 would suggest, of little value to the Board since we
22 haven't seen a lot --

23 THE CHAIRMAN: I realize that. What I am
24 saying is the wording that is there, seems to me, does
25 not preclude you filing them in a staggered fashion.

1 MR. CASTRILLI: No, that's correct,
2 that's correct. But what it seems to definitely
3 preclude is our filing anything after -- or sorry, I
4 should say within that final 60-day period.

5 THE CHAIRMAN: Oh, okay.

6 MR. CASTRILLI: What we are really
7 seeking is parallelism with paragraph 5(a).

8 THE CHAIRMAN: Okay. We will certainly I
9 think acede to that suggested amendment.

10 MR. CASTRILLI: Those are my submissions,
11 Mr. Chairman.

12 THE CHAIRMAN: Very well.

13 Now, do any other parties have any
14 submissions with respect to these?

15 MR. TUER: Just the other thing that I
16 had noted, Mr. Chairman, has been covered off by
17 yourself and previous counsel. As a matter of
18 clarification, however, in paragraph 5(d)--

19 THE CHAIRMAN: Yes.

20 MR. TUER: --the wording speaks of a
21 concise summary of the issues they intend to address,
22 their evidence as they relate to OFIA/OLMA. Of course,
23 those are two incorporated organizations consisting of
24 many members.

25 Can I safely assume that issues that

1 relate to any member of those organizations will be
2 dealt with in that fashion?

3 THE CHAIRMAN: Yes, I think we will
4 change it to read that, member companies--

5 MR. TUER: Yes.

6 THE CHAIRMAN: --of OFIA/OLMA.

7 MR. TUER: Yes.

8 THE CHAIRMAN: Okay.

9 MR. TUER: I think that is all I have to
10 say, sir. As I said, I had the same concerns as others
11 respecting the 15-day period for interrogatories but I
12 think we should see how it works and I may in fact be
13 before you, but possibly not.

14 THE CHAIRMAN: Well, we will be prepared
15 to hear you at that time.

16 Mr. Williams?

17 MR. WILLIAMS: Mr. Chairman, just on that
18 same paragraph and the same point that has been raised,
19 my only concern is with regard to the vagueness or
20 generality contained therein when you say "as they
21 relate to".

22 I don't think there is any preciseness
23 set out herein as I think was intended that it would
24 relate to matters where allegations of inappropriate
25 and environmentally unsound timber management practices

1 are made against those member companies.

2 THE CHAIRMAN: Well, the Board considered
3 that and gave it serious consideration and we are of
4 the view that there are situations where parties may
5 make a generalized allegation against member companies,
6 as well as specific allegations of a specific incident,
7 and it is our view that the OFIA should have prior
8 notice to the extent that it is possible without
9 forcing the parties to file witness statements in
10 advance.

11 We felt in balancing the interests of all
12 the parties that that was a little too onerous, that is
13 why we are going to a summary of the case against OFIA
14 by other parties.

15 Now, it is a matter of procedural
16 fairness, as we heard in argument on the motions, if
17 the Board finds that the OFIA did not have sufficient
18 notice because the parties did not include what the
19 Board feels they might have or should have in their
20 concise summary of issues, then the Board will consider
21 granting a limited right of reply so that OFIA will
22 have an opportunity to respond. So it is really up to
23 the parties to a certain extent.

24 OFIA will not get a right of reply for
25 issues or allegations for which they have had prior

1 notice. That is the intent of this. If the parties
2 want to allege it and put it in as they should in
3 fairness, then OFIA is compelled to deal with it in
4 their case in direct in the normal fashion.

5 MR. WILLIAMS: It just seemed to me, Mr.
6 Chairman, that there should be a consistency at the
7 conclusion of the words as they relate to, now amended,
8 as any member companies of.

9 THE CHAIRMAN: Yes.

10 MR. WILLIAMS: In cases where
11 allegations, using the terms that have been used
12 throughout all of the argument before, it would
13 remain --

14 THE CHAIRMAN: It may not be a specific
15 allegation. What we are looking for here is to allow
16 OFIA the reasonable opportunity to respond to the case
17 against them, so to speak, whatever it is.

18 MR. WILLIAMS: I appreciate that. It
19 just seems to me that there is virtually nothing that
20 doesn't affect them in some way in any evidence that
21 would be put in and this just puts an added onus and
22 burden on people who may not be intending to single out
23 the industry of any indiscretions or...

24 THE CHAIRMAN: Well, the industry, in the
25 Board's view, Mr. Williams, is in a different -- I am

1 certainly not going to use the word special in any
2 unusual way, certainly not in the constitutional sense
3 that is bandied around these days with the various
4 provinces - but they are in a different position than
5 often parties in support are.

6 They are the ones who really carry out
7 many of the activities for which the Board is
8 considering in terms of the proponent's application,
9 and the Board's ruling or decision in this matter will
10 certainly affect them to some considerable extent at
11 the end of the day. And, in that sense, they are not a
12 co-proponent, they do not have a general right of reply
13 as the proponent does at the end of the case, but
14 nevertheless we feel that they should have as full
15 disclosure as possible without placing what we feel
16 would be an intolerable burden on those parties in
17 opposition to have to deliver their statements ahead of
18 hearing the evidence from OFIA.

19 And so we are very much balancing things.
20 And I guess my response to your submissions are: The
21 Board will look at the question of whether those
22 statements are sufficient in terms of what we consider
23 to be fair to all parties concerned, and we will just
24 do it on an ad hoc basis should it arise.

25 MR. WILLIAMS: Again, Mr. Chairman, I

1 appreciate what you are saying. As I say, I was trying
2 to be of assistance. I thought there would be a
3 consistency in making reference to the terms that have
4 been used or the particular area of concern that was
5 the subject matter of that debate, but I appreciate --

6 THE CHAIRMAN: It is such a broad
7 undertaking that we do not want to constrict it by
8 using a term like allegations. We may not be able to
9 foresee the circumstances right at this point in time,
10 that might be outside using a term like allegation.

11 So I think we would like to leave it
12 general and encourage the parties who have a case to
13 make against member companies of OFIA to be as
14 forthright as they can in terms of their statements of
15 issues.

16 MR. WILLIAMS: We just see an added
17 responsibility but if we have to accept -- deal with
18 that, we will, and I appreciate your comments, Mr.
19 Chairman.

20 THE CHAIRMAN: Do any other counsel or
21 parties have anything further to say with respect to
22 the procedural rulings?

23 Mr. Reilly? No.

24 All right, ladies and gentlemen, I want
25 you to particularly note the Board's provisions dealing

1 with the generic heading Scoping of Issues. Do not
2 underestimate in any way the Board's resolve to make
3 some progress and meaningful progress on the idea of
4 scoping issues and determining or defining issues which
5 may not be in dispute by the parties or issues which
6 may be in dispute but are sufficiently set out in the
7 material and, therefore, may not have to take up
8 hearing time in terms of evidence-in-chief.

9 We are not going to, obviously, and we
10 would not have the jurisdiction to do so under the
11 Statutory Powers Procedure Act, to restrict parties in
12 terms of cross-examination and you will certainly be
13 afforded an ample opportunity to cross-examine on any
14 of the evidence put before the Board.

15 But that does not mean that parties may
16 not be in a position to agree that certain issues are
17 not in dispute and, therefore, the time of the Board
18 and the parties does not have to be taken up at the
19 hearing itself.

20 Some of these issues which are not in
21 dispute you can treat in one of two ways: You can
22 leave it out of your evidence completely, if in
23 consultation you decide it just isn't an issue that you
24 have to address, or it may be in your evidence in terms
25 of the written material filed. If it is in the written

1 material filed, admitted as an exhibit before this
2 Board, it is evidence before this Board, the Board will
3 consider it. That does not necessarily mean it has to
4 take up hearing time if that particular issue is not in
5 dispute.

6 So this, I believe, is one of the first
7 times that this Board has seriously entertained an
8 attempt to scope the issues at an actual hearing.
9 There has been a lot of rhetoric in the past over this,
10 but not much progress. I would suggest to you that
11 there will be progress. We are hoping that the
12 progress will be enhanced by your cooperation with each
13 other in terms of prior consultation, if not, we will
14 provide the appropriate assistance and guidance.

15 Okay. Very well, I think we are ready to
16 get on with the major business, Mr. Reilly, if you
17 would like to continue cross-examination.

18 MR. FREIDIN: Just one matter, Mr.
19 Chairman.

20 THE CHAIRMAN: Sorry.

21 MR. FREIDIN: Sorry, Mr. Reilly. It may
22 not even be feasible, I don't know, but if the other
23 parties could advise perhaps when they indicate at the
24 end of September where they would like to call their
25 evidence, if they could just give some really

1 ballpark - and I know it is going to be ballpark -
2 estimate of how long they think their case will be both
3 in direct and cross-examination.

4 I know that no one is going to be held to
5 it, but just for the purposes of maybe making sort of
6 administrative arrangements just to get some idea for
7 long-range planning.

8 THE CHAIRMAN: I think that would
9 certainly be advisable to the extent that the parties
10 can, because it will be in all respects I fear a
11 logistical nightmare when we start trying to move this
12 hearing around the province, particularly trying to get
13 accommodation and making sure that we have the
14 accommodation for a sufficient period of time without
15 blocking people into leases of, you know, long-term
16 arrangements with facilities and that kind of thing.

17 I do not know if we mentioned this
18 before, Mr. Freidin, but we are going to suggest that
19 the proponent give serious consideration to renting or
20 hiring or leasing, or whatever, a mobile vehicle which
21 could be set up to carry the exhibits from location to
22 location in some sort of way where the exhibits could
23 be left in the vehicle outside of the hearing location,
24 and if an exhibit is needed we could break to get it
25 instead of having to set up an exhibit room and doing

1 the whole thing for each location.

2 MR. FREIDIN: That matter has already
3 been addressed, Mr. Chairman. I think arrangements
4 have been made or are in the process of being made to
5 have a large vehicle and then I think Ms. Tieman over
6 there by the door wants to drive, so...

7 THE CHAIRMAN: Well, if you will equip it
8 with a sauna or jacuzzi that would be always
9 preferrable and the Board will succond it for itself.

10 MR. FREIDIN: Arrangements are being made
11 to have some sort of transport for the purpose of doing
12 just what you suggested.

13 THE CHAIRMAN: Very good. Sorry, Mr.
14 Reilly, we are ready for you now.

15 MR. REILLY: I will see if this is on
16 this morning so everyone can hear.

17 THE CHAIRMAN: It isn't on?

18 MR. REILLY: Maybe that will be better.

19 THE CHAIRMAN: You may just have to speak
20 up a little, I am afraid.

21 MR. REILLY: Okay. We are continuing on,
22 Mr. Chairman, with Mr. Kenrick and I would refer you to
23 page 110.

24 JOHN E. KENRICK,
25 M. MELVIN CRYSTAL, Resumed
CONTINUED CROSS-EXAMINATION BY MR. REILLY:

1 Q. Mr. Kenrick, I think that in the
2 evidence yesterday, I believe this is the case, that it
3 was generally agreed that this Figure 30 refers --
4 while it refers to all of Ontario, does not really have
5 much effect on zeroing in on the area of the
6 undertaking?

7 MR. KENRICK: A. That's correct.

8 Q. Yes. My question is that generally
9 in your evidence you, I believe, have suggested there
10 are a lot of surveys done by MNR and I think you
11 indicated you do a lot of surveys on forestry, but it
12 appears that there are not very many surveys on
13 fishing, and I am wondering why that is.

14 And I am referring particularly to the
15 area of the undertaking, northern Ontario and the area
16 of the undertaking.

17 A. Surveys on fishing, do you mean
18 surveys on anglers, fishermen or fish surveys?

19 Q. Well, there seems to be a general
20 dirth of surveys on the whole area of fishing.

21 A. I believe a subsequent panel will
22 talk about the surveys that relate to the fish and the
23 habitat. In terms of angler surveys, the reference I
24 made before to the federal/provincial study, that is a
25 survey of anglers and their expenditures and where they

1 come from and I think is quite a complete survey.

2 Q. All right. Then moving on to
3 tourism. Are there specific northern Ontario
4 statistics available on tourism?

5 A. There are the report on the hunting
6 and fishing lodge industry which is dated that I
7 believe is being updated. There has been a provision
8 to go back at that type of a survey jointly funded by
9 some different organizations.

10 I also understand in response to one of
11 the interrogatories we have found another study that
12 addressed the economic impact of tourism in northern
13 Ontario and I think it was a 1985 study. There is not
14 a lot other than that that I am aware of. Again, those
15 were studies prepared either by or for the Ministry of
16 Tourism and Recreation.

17 Q. It seems odd, it is a multi-billion
18 dollar industry we are dealing with. Are there
19 statistics and surveys done with regard to native
20 people in relationship to tourism?

21 A. I am not aware of a specific survey
22 that would be structured along the lines of the one I
23 previously mentioned where it zeros in on the impact or
24 benefit --

25 ---(Fire alarm)

1 ---Short recess

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen. I want to thank whoever pulled the alarm
4 for the break, it was appreciated.

5 Mr. Reilly, we are back to you.

6 MR. REILLY: Thank you, Mr. Chairman.

7 Q. I believe we will go on now to page
8 111. In the first full paragraph, the last sentence:

9 "It is estimated that northern Ontario
10 tourism employs 43,000 people directly
11 and indirectly."

12 Could you tell me, does that include all
13 of the area of the undertaking in the term northern
14 Ontario?

15 MR. KENRICK: A. That particular
16 reference is the Ministry of Northern Development and
17 Mines and I believe the boundary that they use when
18 they use the term northern Ontario, is the -- north of
19 the southern boundary of the territorial districts of
20 Nipissing and Parry Sound.

21 So, again, I believe if you look at the
22 chart above, some of the area that is within the
23 undertaking is within the area called south and
24 central; in other words, Muskoka down into the
25 Haliburtons.

1 Q. But the term northern Ontario then, I
2 take it, is smaller than the area of the undertaking at
3 least as far as the southern boundary?

4 A. That's correct.

5 Q. Do you know how many of the people
6 employed directly or indirectly in tourism are natives?

7 A. No.

8 Q. I think you stated someplace in your
9 evidence or in response that you viewed the MNR as a
10 major environment ministry and a major tourism
11 ministry. And I am wondering, has MNR ever done a
12 study to see if northern Ontario residents view MNR as
13 a positive or a negative force in either of these
14 fields?

15 A. I am not aware of such a polling or
16 study, no.

17 Q. It might be very enlightening.
18 Moving over to page 128 on cottages, and the second
19 paragraph, do I understand it correctly that these
20 figures were subsequently corrected by yourself to be
21 approximately \$48,000 per year per cottage which would
22 mean about \$2-billion in annual recreational
23 expenditures?

24 A. That's correct. There is a study
25 that had been undertaken by Woods Gordon, I understand,

1 I believe it is in 1985 and they had another estimate.
2 It also included different elements than that number
3 did. For instance, some of the capital costs of
4 constructing new cottages I believe is in that \$4,800.

5 Q. I was going to ask you: What is
6 meant by annual recreational expenditures?

7 A. I wonder if I might refer to an
8 interrogatory.

9 Q. While you are looking that up, if the
10 Woods Gordon figures have amended these figures, would
11 the same answer apply that you gave in interrogatories
12 or is it -- I think you have just indicated it may be a
13 wider field.

14 A. Yes, they count different things.
15 The original number was more restrictive in terms of --
16 the \$1,800 was more restrictive in terms of the number
17 of things it included as opposed to the \$4,800.

18 Q. Do you know what is in the Woods
19 Gordon Study?

20 A. I believe so, I am just checking.

21 MR. FREIDIN: If you are looking for the
22 interrogatory in relation to Woods Gordon I believe it
23 is NOTOA 10.

24 MR. KENRICK: If I may, I will just read
25 from this.

1 "The \$1,800 figure reflected only
2 maintenance costs of cottaging on an
3 annual basis."

4 The recent study of Woods Gordon includes
5 such things as auto fuel, marine fuel, food,
6 recreational equipment, cottage construction and
7 maintenance, local services, insurance, taxes,
8 telephone and hydro.

9 MR. REILLY: Q. It is a much more all
10 inclusive figure. Just looking to find when was the
11 original -- when did the 18 hundred -- when was the
12 study done that gave the \$1,800 figure?

13 MR. KENRICK: A. I am not sure of the
14 exact year. I understood it to be about 15 years old
15 and it was based on Muskoka figures.

16 Q. Oh, okay, thank you. Moving over to
17 page 137 and Figure 45. Here again, this is I note a
18 1974 table. Would you agree that lifestyle attitudes
19 have changed dramatically for the people of Ontario
20 since 1974?

21 A. I would agree if the survey was done
22 again you could probably get different results, how
23 people spend their time or amount of leisure time may
24 well have changed.

25 Q. Well, I really don't think that is

1 the answer I was looking for, though. Since the year
2 1984 to today, I am suggesting to you that there has
3 been a tremendous change in lifestyle attitudes of
4 Ontario.

5 THE CHAIRMAN: You meant 1974; didn't
6 you?

7 MR. REILLY: Sorry, 1974, I did, to
8 today.

9 Q. There really is much more use, I
10 think any one would recognize that, of leisure time--

11 MR. KENRICK: A. Correct.

12 Q. --in that length of time.

13 Would you agree that this then means that
14 probably more and more people have an interest in
15 seeing our forest preserved today than in the time of
16 this study, 1974?

17 A. Again, I am having trouble
18 generalizing on that. I have heard arguments made that
19 two-income families are restricting the amount of time
20 that families have where they can get away for longer
21 periods of holidays. I have heard that case made and I
22 don't know how to rank that or weight that compared to
23 your conclusion.

24 Q. I guess I am asking you really as an
25 expert in the field. I would think you are aware of

1 this type of trend.

2 A. My observation would be people have
3 more leisure time now than they probably had in 1974.

4 Q. Would you care to carry that
5 observation on to use of the forest by people,
6 preservation of the forest? Surely MNR must notice a
7 greater demand?

8 A. There are changes in attitudes. MNR
9 I think is aware of it and I think is working trying to
10 respond to some of it.

11 THE CHAIRMAN: Mr. Kenrick, wouldn't the
12 mere fact that the Ministry, for instance, has created
13 in the last -- or the government has created in the
14 last three or four months some 50 additional parks be a
15 clear indication that at least the government feels
16 that the public wants a larger recreational opportunity
17 in terms of the province?

18 MR. KENRICK: That's correct.

19 MR. REILLY: Thank you, Mr. Chairman.

20 Q. Mr. Kenrick, page 139, in the bottom
21 paragraph you refer to the extensive use of local media
22 to announce projects. What specific efforts are made
23 to inform the Metis and non-status Indians?

24 MR. KENRICK: A. I am not aware of a
25 specific initiative to -- other than the fact they may

1 well be a public group who has an interest in the
2 undertaking and if they have expressed an interest and
3 we know they are interested, we contact them much like
4 we would contact a lot of other groups.

5 Q. You are not aware of any specific
6 initiative and yet figures we referred to yesterday
7 indicated that perhaps 20 per cent of the population in
8 the area of the undertaking is Metis and non-status
9 Indians.

10 Do you agree that that is a very
11 specific -- if that figure is correct and acceptable,
12 that is a very significant percentage of the
13 population?

14 A. That's correct, but I believe that
15 there are considerable initiatives around to contact
16 the public universally, if you will. You are asking
17 me if there is an avenue for contacting specifically
18 one group, but universally my answer to that would
19 probably be no.

20 Q. No, Mr. Kenrick, I have to take you
21 back to your response at that one point, it isn't for
22 lack of trying. I am suggesting to you that as far as
23 the Metis and non-status Indians are concerned that may
24 not be correct.

25 A. Again, I believe the comment that I

1 made about lack of -- not for the lack of trying, is
2 that there is considerable effort gone in to reach the
3 public generally. I am just not aware of a policy that
4 has a list that says in all cases you shall
5 specifically target this group and this group and this
6 group.

7 Q. Is there any specific effort made
8 with regard to Indian -- status Indian people?

9 A. I believe, and I will just check the
10 reference in the portions of the assessment document
11 that relate to public notice, I just want to check the
12 words on it, if I may.

13 The quote, and I am reading from page 156
14 where it talks about invitation to participate:

15 "Direct written invitations to local and
16 regional offices or relevant government
17 ministries or agencies, municipalities,
18 interest groups, band councils of each
19 Indian reserve in the forest management
20 unit, native communities and/or
21 organizations and individual
22 members of the public with a known
23 interest in timber management --"

24 THE CHAIRMAN: Hold it, Mr. Kenrick, we
25 have a court reporter who unfortunately cannot keep up

1 with you, nor can we for that matter.

2 Sorry, what page are you on?

3 MR. KENRICK: 156.

4 THE CHAIRMAN: Page 156. Is it a lengthy
5 quote?

6 MR. KENRICK: Six lines.

7 THE CHAIRMAN: Okay, you may as well read
8 it into the record then.

9 MR. KENRICK: "Public notice will
10 normally be in the form of..." and the
11 first point:

12 "Direct written invitations to local and
13 regional offices of relevant government
14 ministries or agencies, municipalities,
15 interests groups, band councils of each
16 Indian reserve in the forest management
17 unit, native communities and/or
18 organizations and individual members of
19 the public with a known interest in
20 timber management planning for the
21 management unit."

22 And then there are some other, it talks
23 about local media.

24 MR. REILLY: Q. Sorry.

25 MR. KENRICK: A. I would assume from

1 that that if in the area of the forest management plan
2 there was, for instance, in Ontario, Metis and
3 aboriginal group, that they would be included as part
4 of the native communities and organizations. If I take
5 the word native the way it is used in my evidence, they
6 would be one of the groups who we would get in contact
7 with.

8 I guess where I am not quite as sure is
9 where that group doesn't exist, say, in the local
10 community, but the people are in the community in
11 total, how we get in touch with them, and in those
12 cases I believe we would probably be using the media.

13 Q. So now, as I understand it, you
14 indicated you personally were not aware of any attempt
15 to specifically contact these groups but what you have
16 read us probably directs that these groups should be
17 contacted?

18 A. Yes.

19 Q. On page 139 -- yes, again on page
20 139, about a third of the way down, I will just read
21 you a sentence.

22 "For example, at the district level,
23 Ministry of Natural Resources' staff
24 maintain regular contacts with a variety
25 of locally based organizations."

1 And what are you referring to in regular
2 contacts? Is this the type of thing where someone
3 comes into the office or is it an out reach type of
4 contact?

5 A. My experience, for instance, with the
6 groups listed here is that we would go to regional
7 meetings they would have or we would go to their annual
8 meetings, usually on request, or we would have a topic
9 that we think would be of interest to them and we would
10 request to be on their agenda.

11 Both the Northern Ontario Municipal
12 Associations, the northeastern one that I am most
13 familiar, with and the Ukano group, I have made
14 presentations to both of those on issues of interest to
15 them.

16 Q. You mentioned Chambers of Commerce?

17 A. Correct.

18 Q. Is this a regular type of attendance
19 for the Chamber of Commerce?

20 A. It has been my experience that
21 district staff and the community I live in right now
22 would attend chamber meetings perhaps a couple of times
23 a year.

24 I might also mention that one of those
25 groups that is regional in nature, the former OMNSIA

1 group, I have made presentation to groups such as that
2 also.

3 Q. Okay. Thank you. Just one last
4 thing. Can I go back to page 39. I realize -- I am
5 looking at the fourth paragraph down, for instance.

6 I realize this is an overview and there
7 will be more specific information given later, but
8 specifically, will detailed information be given for
9 location and population statistics for non-status
10 native people?

11 A. I would suspect not. My reason for
12 saying that is I think there would have to be a
13 reliance back on the same database that I used and I am
14 not sure it could be obtained out of that.

15 One of the problems that - I will
16 volunteer this information if I may - that affects this
17 topic is the group is difficult to define. The very
18 fact that there is so many definitions of how big the
19 group is, to start with, makes it difficult to decide
20 who is in the group and who isn't.

21 Q. Well then, will the Board be given
22 specific information on each forest management unit or
23 forest management area?

24 A. There will be specific information
25 given in Panel 15. I think that is where we are

1 dealing with specific -- specific information on what,
2 sir?

3 MR. FREIDIN: Perhaps I could just assist
4 here. Mr. Reilly, if you are asking whether there will
5 be information in terms of statistics regarding Metis
6 and aboriginal peoples and others, specific
7 information, statistics in relation to each management
8 unit in the province the answer is no, there will not
9 be evidence of that nature.

10 MR. REILLY: That is what I was asking,
11 thank you.

12 Q. Thank you, Mr. Kenrick, we can move
13 on to Mr. Crystal.

14 Mr . Crystal, do I understand that you
15 use the term in your evidence -- the term Indian to
16 mean registered status Indian.

17 MR. CRYSTAL: A. Yes, that's what I
18 tried to do, yes.

19 Q. And the term native is used in the
20 broader sense to include Metis, all other non-status
21 Indians and status Indians?

22 A. That was the intent, yes.

23 Q. Yesterday morning, I noted you said
24 that you felt negotiations need to be ongoing and will
25 be ongoing. Does this mean that, in your opinion,

1 there will be negotiations with non-status Indians as
2 well as status Indians ongoing?

3 A. Yes.

4 Q. On page 176 you discuss the leniency
5 guidelines.

6 A. Yes.

7 Q. Would these guidelines only apply to
8 status Indians?

9 A. They do not apply to Metis and
10 non-status Indian people.

11 Q. In your opinion, and as an expert, in
12 Canada today do Metis and non-status Indians have any
13 recognizable or potential claims to treaty rights?

14 A. Well, I refer you, of course, to
15 Section 35(1) of the Constitution and Section 35(2) of
16 the Constitution which I think is set out at page 278
17 in the material.

18 Section 35 (1), as we have heard several
19 times in the last several days, is the existing
20 aboriginal and treaty rights:

21 "...and the aboriginal people of Canada
22 are hereby recognized and affirmed."

23 In Section 35(2) it says:

24 "In this Act, aboriginal peoples of
25 Canada includes the Indian, Inuit and

1 Metis peoples of Canada."

2 So that is a direct reference. I am also
3 aware, in a very general sort of way, of certain
4 different sets of litigation, I believe, that have been
5 ongoing in the Province of Manitoba involving the
6 rights of Metis and non-status people, but I couldn't
7 really comment on that litigation.

8 Q. And they are referring to treaty
9 rights?

10 A. I believe -- I am not certain about
11 that. I am not certain if the basis of those -- of
12 that litigation is based on something that is a treaty
13 or I think, in some cases, it may actually be based in
14 legislation in Manitoba. But, again, I am not really
15 very familiar with that litigation so I can't really
16 comment on it.

17 Q. But I took your answer to be, in
18 simple terms, that you feel that the Metis and
19 non-status do have recognizable claims?

20 A. Well, it gets back to this issue--

21 Q. Treaty rights.

22 A. --that I talked to at the very
23 beginning of my direct evidence, where I said even in
24 respect of non-stat -- of status people rather, while
25 there can be no doubt that there is constitutional

1 protection for something called treaty and aboriginal
2 rights, it is very uncertain as to what elements
3 comprise that term treaty and aboriginal rights, and I
4 think that the lack of definition is even greater for
5 Metis and non-status people than it is for status
6 people.

7 Q. Are you aware that OMA is presently
8 putting forth such claims?

9 A. Am I aware that OMA is making claims
10 to treaty rights?

11 Q. Yes.

12 A. Yes, I am.

13 Q. Yes, thank you. Then does it follow
14 that Metis and non-status Indians may have recognizable
15 and -- or potential rights in the lands that comprise
16 part of the area of the undertaking or in the forests?

17 A. Well, as I said a few times now, at
18 this point in time the substance of those rights are
19 unclear, but I definitely would foresee some time in
20 the future when those rights might be made more clear
21 and that those rights would then have constitutional
22 protection clearly under Section 35(1) of the
23 Constitution.

24 Q. In your knowledge, were OMA or any
25 other Metis or non-status Indians consulted before the

1 adoption or implementation of the leniency guidelines?

2 A. I am not aware that they were.

3 Q. On page 177, on paragraph 1, the last
4 sentence:

5 "Ontario and MNR are, however, committed
6 to consulting native people before
7 adopting or implementing policies that
8 affect native people."

9 Can you list the times and circumstances
10 of consultation with OMA?

11 A. Well, I have certainly been present
12 at meetings and discussions with representatives of
13 OMA. I am not sure that to provide you with a list of
14 those meetings that I have had with OMA would
15 necessarily be responsive to your question.

16 Q. All right. In generalities, is OMA
17 consulted, or are you referring in this sentence more
18 to status people?

19 A. Well, no. In this sentence I am
20 referring to native people in general and that would
21 include non-status people. I would think that in the
22 past OMA perhaps has not been consulted on matters in a
23 very great manner.

24 I think that is clearly the intention
25 through stated policy of Government of Ontario that

1 there will be greater consultation in the future.

2 Q. In the past, the consultation that
3 has taken place, meetings, what have you, can you state
4 generally by whom it has been initiated?

5 A. Generally OMA.

6 Q. Yes. Would you agree with me that
7 Ontario has refused numerous requests and invitations
8 to enter into negotiations with OMA concerning
9 self-government and lands claims?

10 A. No, I wouldn't agree with that. I
11 think that the Ontario Native Affairs Directorate is
12 currently involved with discussions with OMA on
13 precisely those issues.

14 I haven't been directly involved in those
15 discussions because the Ontario Native Affairs
16 Directorate has taken the primary role, but it is my
17 understanding that those discussions are continuing and
18 that Ontario has not refused to participate in those
19 discussions.

20 Q. But you are not directly involved in
21 these?

22 A. To the extent that they -- I have
23 been involved in discussions with OMA to the extent
24 that they involve natural resources and lands issues in
25 a very direct sort of way. I know that there have been

1 discussions about self-government of a more general
2 nature that I have not been involved in.

3 Q. Are you aware that there is funding
4 for OMA for some specific uses that is supplied by the
5 Province of Ontario?

6 A. I believe that's correct, but I am
7 not personally involved.

8 Q. Would it be a safe statement then to
9 say that Ontario generally does recognize that Metis
10 and non-status Indians do have some special rights,
11 treaty or otherwise?

12 A. Well, again, while there are so --
13 while both the rights and the group to whom those
14 rights are to be attributed, the clear definition of
15 that group are very unclear at this point in time.

16 In principle I think that it is -- I know
17 that it is the policy of Ontario to recognize some form
18 of special rights on behalf of not necessarily OMA, but
19 Metis and non-status native people.

20 I don't exclude OMA from that group
21 obviously, but I don't single out OMA as being the
22 group which is entitled to that recognition. There may
23 be some Metis and non-status people who are not members
24 of OMA and surely they are entitled to the same
25 recognition as members of OMA are.

1 Q. Thank you. On that same page, on the
2 third sense -- sorry, the third paragraph, last
3 sentence:

4 "The timber management planning process
5 described in the class environmental
6 assessment document requires that
7 specific notice of each step in the
8 process be provided to band councils and
9 other native communities."

10 Was specific notice of each step in the
11 process given to OMA and its locals?

12 A. I think that perhaps someone else
13 would be better qualified to answer that question than
14 myself. Maybe my counsel can provide that answer.

15 MR. FREIDIN: I think the information
16 that Mr. Kenrick referred to in the Environmental
17 Assessment, I think it was page 156, in terms of notice
18 to native communities and organizations is in response
19 to that question in terms of notice to native groups.

20 MR. REILLY: Then I take it that that
21 would mean that it was not given to OMA specifically
22 and its locals? I don't want to put words in anyone's
23 mouth.

24 MR. FREIDIN: If you are asking whether
25 it was given -- if there was a timber management

1 planning being prepared in Dryden, whether notice was
2 given to OMA at the main office of OMA located
3 somewhere else, the answer to that would be no, that
4 did not take place. And if you are also asking whether
5 such notice is contemplated as being given, the present
6 position is no, that the information will be given
7 to -- in a more local manner than that.

8 MR. REILLY: Would it be given then to
9 the locals that are in the particular areas?

10 MR. FREIDIN: If they were organized and
11 identifiable, I think -- and indicated an interest in
12 timber management, they would also be given notice.

13 MR. REILLY: Now, you say only if they
14 indicate an interest in timber management then, do I
15 understand that correctly?

16 MR. KENRICK: Perhaps I --

17 MR. FREIDIN: Perhaps I can take that
18 under -- if you can answer the question, that is fine,
19 Mr. Kenrick, but if you can't I will take that under
20 advisement and clarify that particular matter.

21 THE CHAIRMAN: I think it would probably
22 be better if you did that unless you have a very
23 specific answer, Mr. Kenrick.

24 He nodded, Mr. Freidin, that he did not,
25 so you will be undertaking to provide that information.

1 MR. FREIDIN: Yes, hopefully after the
2 noon break.

3 THE CHAIRMAN: Thank you.

4 MR. REILLY: Q. Do band councils, to
5 your knowledge, have funds available to aid them in
6 reacting or responding to MNR proposals?

7 MR. CRYSTAL: A. I believe that there
8 are certain funds that are made available to bands for
9 various purposes, sometimes its called block funding.

10 Q. I am sorry I didn't hear that.

11 A. There is something called block
12 funding which is provided to various different
13 organizations. I think OMA may also receive something
14 in the nature of block funding. And I know that there
15 is also money available from the federal government for
16 various different purposes, and that may be used to
17 respond to initiatives involving MNR.

18 Q. Do you know that as a fact?

19 A. It is not -- somebody from the
20 Ontario Native Affairs Directorate would be more
21 qualified than me to provide that information, that
22 is -- that general funding information rather than
23 natural resource management sort of issue. I have
24 heard reference to this kind of funding, but I have
25 never been personally responsible for it.

1 MRS. KOVEN: Excuse me, Mr. Crystal,
2 could that funding be used to assist groups appearing
3 before the the Board or you are talking about funding
4 that has been in place for a long time?

5 MR. CRYSTAL: I am generally talking
6 about funding that has been in place for some time.

7 MRS. KOVEN: And it is distributed by
8 ONAD?

9 MR. CRYSTAL: It has some responsibility
10 for that, yes.

11 MR. REILLY: Q. Mr. Crystal, I suggest
12 to you that that funding is there for self-government
13 issues more than responding to issues such as MNR may
14 raise?

15 MR. CRYSTAL: A. That may be the case.

16 Q. On page 178 - if I can figure my
17 notes out here - it is the fourth paragraph down:

18 "Any negotiations for the transfer of
19 access to natural resources shall be
20 subject to the existing commitments."

21 A. Yes.

22 Q. Would you agree that this was not
23 followed when the wild rice policy was put into effect,
24 and I am asking with respect to Metis and non-status
25 Indians?

1 A. Well, I wouldn't agree with that bald
2 statement, but if you can provide me with a more clear
3 definition to what you are referring to I might be able
4 to comment.

5 Q. Are you aware that Metis and
6 non-status Indians claim existing commitments, claimed
7 at that time existing commitments with regard to wild
8 rice?

9 A. I don't know that I ever seen the
10 word commitment attached to this.

11 Q. Well, I am using the word out of --

12 A. Yes, I understand that, but you are
13 using it in the context of what Metis and non-status
14 people have referred to and I am telling you not what
15 I -- I am not referring to what I have set out in my
16 witness statement, but I am referring to correspondence
17 that I recall I have read from Metis and non-status
18 groups and wild rice and I don't recall the word
19 commitment.

20 Q. What do you mean by commitment?

21 A. I mean relationships of a legal
22 nature, of a contractual nature, but I -- it may also
23 involve more broad commitment -- a more broad meaning
24 than that.

25 Q. Would it involve a claim or in fact

1 right by status Indians to the harvesting of wild rice?
2 Is that the type of thing you mean in the commitment?

3 A. No. I think what I mean by a
4 commitment is that the Government of Ontario may have
5 made either statements or relationships with other
6 parties in the past and that those commitments, those
7 active commitments would be subject to any negotiations
8 for the transfer or access to natural resources.

9 Q. Oh, so that has nothing to do then
10 with native claims, this particular sentence?

11 A. Well, I would say -- I would suggest
12 to you that the native claims is the first part, is
13 referable to the first part of the sentence, not
14 necessarily to the existing commitments part of the
15 sentence.

16 Q. Perhaps I am the only one confused.
17 I am referring to the transfer of access to wild rice
18 which I presume took place when the wild rice policy
19 was put into effect and --

20 A. Are you referring to the moratorium?

21 Q. Yes, and--

22 A. I am not sure.

23 Q. --really what happens, were there any
24 negotiations with Metis and non-status Indians?

25 A. I am not aware that there were. That

1 occurred in 1978 and while I have reviewed files in the
2 past, I am not aware of any discussions that took place
3 with Metis and non-status people.

4 But the moratorium, as such, essentially
5 what that was was a statement by the Government of
6 Ontario that in the area of north, the administrative
7 regions of northwestern Ontario, northwestern region
8 and northcentral region, non-native people would not be
9 issued new licences for the harvest of wild rice in
10 that area.

11 Q. You used the word non-native.

12 A. I believe that is what the words that
13 are used in the policy are.

14 Q. That would mean then that a status or
15 non-status Indian could proceed with the harvest as
16 long as he were previously licensed?

17 A. Well, if he were previously licensed,
18 I don't believe that the moratorium would take away his
19 licence.

20 Q. What if he were not previously
21 licensed?

22 A. If he is a status Indian, he would be
23 able to acquire a licence. I could try -- now, the
24 question of whether or not non-status native people
25 would be issued licences in that area is something that

1 I could determine quickly and I would -- on the advice
2 of my counsel I would undertake to provide you with the
3 answer to that question.

4 Q. Thank you very much, if you would.

5 MR. FREIDIN: We will provide that
6 information.

7 MR. REILLY: Q. On that same page in the
8 third -- no, I have got your answer on that question.

9 Do you know what percentage of the native
10 people in the Treaty 3 area are not represented by
11 Grand Council Treaty No. 3?

12 MR. CRYSTAL: A. No, I don't know the
13 answer to that question.

14 Q. Would you agree with me that it is
15 over 50 per cent of the native people using your
16 definition of native?

17 A. As I said, I would be guessing if I
18 answered your question.

19 Q. In the last paragraph you refer to
20 the 53 new provincial parks.

21 A. Yes.

22 Q. And my question is: Will Metis and
23 non-status Indian constituents of OMA be allowed to
24 exercise their treaty rights once settled or if so
25 found in these 53 new provincial parks?

1 A. At the present time, people who are
2 not status Indians do not have harvesting rights within
3 those parks.

4 At some future time, if there was some
5 negotiated resolution to harvesting, traditional
6 harvesting by non-status native people, I would presume
7 that those negotiations would include the issue of
8 whether or not that harvesting would go on in the
9 parks. And so I am really not in a position to say
10 that -- to answer the question now.

11 Q. On page 180 you refer to negotiating
12 lands claims. I think in general, and my question is
13 general: To date, have any OMA communities received
14 any funding from the Ontario government to research
15 land claims or to negotiate or litigate any land
16 claims?

17 A. Well, I know -- I am not sure if the
18 community is represented by OMA in any way, but I know
19 that there is a community on James Bay that is involved
20 in a land claim which the Government of Ontario is
21 entertaining at the present time. I am not aware of
22 the funding arrangements in respect of that land claim.

23 Q. And that -- is there any other?

24 A. Not that I am aware of. I believe
25 that was the first and I think I became aware of it a

1 few years ago and no others have been brought to my
2 attention, but that doesn't mean that there aren't
3 others.

4 Q. And, as an expert, is it really
5 possible to make out valid claims in this field without
6 having expertise behind you, without having funding
7 to...

8 A. Without professionals and without
9 funding, it certainly would be difficult to proceed
10 with a land claim, yes, I can agree with that.

11 Q. I would suggest more than difficult,
12 virtually impossible.

13 A. Well, that is a matter of judgment, I
14 guess. It certainly would be very difficult.

15 Q. On page 181, under the heading of
16 Native Self-Government you say:

17 "Ontario is committed to support
18 self-government for aboriginal people in
19 Ontario and to enter into self-government
20 negotiations with the federal government
21 and provincial native organizations"

22 A. Yes.

23 Q. Does this mean that Ontario will be
24 negotiating? Is it a definitive statement that Ontario
25 will be negotiating self government with non-status

1 Indians?

2 A. I believe that such negotiations are
3 being pursued at the present time. I suppose the
4 parameters of those negotiations will differ from
5 negotiation to negotiation. The elements of
6 self-government are -- at the present time the elements
7 that ought to be present in self-government
8 negotiations are at the present time a very important
9 policy issue within the Government of Ontario and I
10 think that policy issue is equally applicable to
11 non-status people as it is to status people.

12 And I do believe that self-government
13 negotiations will be on-going with non-status people.

14 Q. Do I understand that the position of
15 MNR as proposed in your paper is that the Board should
16 not deal with the question of aboriginal or treaty
17 rights?

18 A. That it's not necessary for the Board
19 to determine that issue in order to make its order, but
20 that I think that the information that has come out in
21 the past couple of days will be very helpful in the way
22 of background information to assist the Board in making
23 its final order.

24 Q. If I may, I would like to refer you
25 to Exhibit 224 which was the Canadian Bar Association's

1 material and I am really only going to quote one
2 sentence there.

3 A. Shall I get out my copy.

4 Q. I don't think it is necessary. Page
5 21 and continuing on 22.

6 THE CHAIRMAN: Sorry.

7 MR. REILLY: I just wondered if you wanted
8 me to wait.

9 THE CHAIRMAN: No, it is okay.

10 MR. REILLY: Q. It says:

11 "Uncertainty also remains as to which
12 groups possess aboriginal title. There
13 are conflicting..."

14 Sorry it is two sentences.

15 A. Sorry, it is what page?

16 Q. Page 21 at the bottom.

17 A. Yes.

18 Q. "There are conflicting opinions
19 concerning the entitlement of the Metis
20 as well as of those Indians who have been
21 excluded from registration under the
22 Indian Act or who lack band membership."

23 And I really simply want to ask you if
24 you would agree with that statement?

25 A. Well, when it says there are

1 conflicting opinions, I am certain that is true. Now,
2 that is -- if that means that there are conflicting
3 opinions within the Government of Ontario as to the
4 issue that I described before, that there should be
5 some special recognition of Metis and non-status
6 people, I don't think -- I think the Government of
7 Ontario presents a corporate view that Metis and
8 non-status people are entitled to some special
9 recognition that, for no other reason, is derived from
10 Section 35(1) of the Constitution.

11 Now, if what that -- if that sentence
12 means, however, that among various people in different
13 communities and the man on the street and so on and
14 various different counsel for different organizations
15 have conflicting opinions, well it probably is true
16 that there are such conflicting opinions.

17 Q. I take it that was an agreement in
18 general with the statement subject to some
19 qualifications?

20 A. Well, what I guess should be
21 emphasized in my answer is that Government of Ontario
22 has a very clear position on the issue.
23 Notwithstanding the elements of those aboriginal rights
24 remain undefined and a means of identifying the group
25 remains unclear, there still is, I believe, a

1 commitment from the Government of Ontario to enter into
2 negotiations with Metis and non-status people and that,
3 therefore, there is a recognition of some form of
4 entitlement.

5 Q. Are you aware that the rights of
6 non-status native people have been recognized by the
7 federal government within the last few weeks? I am
8 referring to a settlement made in the Northwest
9 Territories?

10 A. I am generally aware of a settlement
11 that has been in the press in the Northwest
12 Territories, I am not aware of the details of that
13 agreement.

14 Q. Are you aware that it was with
15 non-status Indian people?

16 A. I was under the impression that it
17 was with Inuit people.

18 Q. Inuit.

19 A. But, again, I am not very familiar
20 with those negotiations and I can't really comment on
21 them.

22 Q. I wonder if this had any effect on
23 changing the policy of the government or MNR or is it
24 too soon to say?

25 A. Well, I think that the position of

1 the Government of Ontario is that there is some
2 recognition of an undefined entitlement to an undefined
3 group and I certainly can't see why such a settlement
4 in the Northwest Territories would detract from that,
5 if anything, I suppose it would enhance it. But to
6 answer your question directly, I don't know that it has
7 had any direct effect at the present time.

8 Q. In your awareness are there any
9 potential land claims to be put forward by non-native
10 people in the area of the undertaking at this time?

11 A. Not that I am directly aware of.

12 Q. I would like to pose a bit of a
13 hypothetical question to you and perhaps it is a bit
14 extreme. But let's assume that all of the area of the
15 undertaking was the subject matter of one or more land
16 claims, title to the lands, right to use the land,
17 right to continue the other traditional activities,
18 whatever and the claims were recognized as valid, would
19 any order made by this Board then be of any effect?

20 A. You say valid. How do you mean that?
21 Is this a claim that succeeds through litigation or is
22 this...

23 Q. It Really doesn't matter.

24 A. Well, it does matter because when you
25 say valid, the embodiment of that validity would either

1 take the form of a negotiated agreement or take the
2 form of a court order and it would be necessary to look
3 at the terms of that agreement or the terms of that
4 court order in order to answer your hypothetical.

5 Q. All right. And I am trying to be
6 general on purpose and I am trying to find out in your
7 opinion, as an expert in the field, what is the effect
8 of a Board order if a certain area of the undertaking
9 affected by that order.

10 A. Well again, I mean, if the order of a
11 court -- let's say that this hypothetical land claim
12 that you have described for the entire area of the
13 undertaking was the subject of litigation - and, again,
14 getting into the realm of unreality, I suppose - but
15 let's just suggest for the sake of the hypothetical
16 that the effect of the court order was to make all of
17 the land subject to the undertaking equivalent in title
18 to fees -- to land held in fee simple by the Metis
19 organization.

20 Well then, I think that if all of the
21 land in the undertaking was held in fee simple that I
22 think that that might have some effect on the order of
23 the Board, yes, but I think that the likelihood of such
24 a resolution of a land claim by a Metis organization is
25 not -- is so trivial as to not really even be

1 considered.

2 Q. No, I agree with you. But I would
3 suggest to you that there is a possibility that rather
4 substantial areas of lands could fall to that very
5 result?

6 A. Well...

7 Q. We are dealing with such a huge area
8 here.

9 A. Yes. Whether or not an order --

10 THE CHAIRMAN: But, Mr. Reilly, would not
11 what you are posing really be decided in the sense that
12 if the Board's order -- sorry, the Board's decision at
13 the end of the day is going to deal with the timber
14 management activities on Crown land, and if it turns
15 out that either prior or after the Board's order
16 certain Crown land is ceded to various groups as a
17 result of land claims, it then no longer becomes Crown
18 land and the Board's decision would probably only be
19 effective in terms of Crown land.

20 MR. REILLY: I agree with you. The thing
21 is that the order may be made, it is question of when
22 in time and an order may be made and acted upon, and
23 that was going to be my next question.

24 THE CHAIRMAN: But if the Board made an
25 order, and it was acted upon because it was at the time

1 of the Board order Crown land, then why is that
2 different from any other land which is Crown land
3 affected by the Board's order. If it is subsequently
4 taken out of the Crown land category, it would
5 presumably no longer be subject to the Board's order.

6 MR. REILLY: I would agree with you, but
7 the fact that this can happen is the very reason why,
8 in our submission, the Board should be dealing with the
9 rights of the native people, they should be dealing
10 with them beforehand and not take the position...

11 THE CHAIRMAN: Isn't that rather
12 presumptive on the Board's part that lands will in fact
13 be granted to the native groups in advance of the
14 process which may be established either through
15 negotiations or litigation to affect that purpose.

16 In other words, the Board is not surely
17 involved in the course of this undertaking with
18 settling lands claims.

19 MR. REILLY: No, I would agree with you,
20 but there are many ways the Board can deal with this.
21 It does have to specifically deal with it, it can deal
22 with the province and put a suggestion to the province
23 or the MNR the proponent that these matters be settled.
24 It can make an order subject to...

25 THE CHAIRMAN: Well, I think the Board

1 should do this probably as a matter of course in the
2 sense that certainly there is outstanding land claims
3 in a variety of jurisdictions including Ontario and I
4 suppose the land claims should be settled at some point
5 in time.

6 MR. REILLY: And it may be more apparent
7 in some forest management unit than in another and I
8 respectfully suggest the Board would want to take note
9 of that because it may be a very far-reaching order
10 when it affects the livelihood of a lot of people.

11 THE CHAIRMAN: Well, certainly the Board
12 will be concerned with the impacts of this undertaking
13 on lands and their effect on users of the forest and a
14 variety of groups other than just the timber industry,
15 there is multiple users of the forest.

16 Part of what I think the Board has
17 established to this point in time certainly covers that
18 part of our mandate includes a look at the
19 environmental impact of these activities upon man,
20 including other users. I mean, we are certainly doing
21 that, but the extent to which having done that, and
22 formulated our decision, whatever it may be, on those
23 management practices, they will ultimately only deal
24 with management of Crown lands.

25 MR. REILLY: Yes.

1 THE CHAIRMAN: And land claims which take
2 Crown lands out of that category and give ownership to
3 somebody else will have to be dealt with, I am sure you
4 agree, in another forum.

5 MR. REILLY: Yes, it will be very
6 interesting to see the draft order proposed by the
7 proponent.

8 THE CHAIRMAN: Well, I am sure a lot of
9 this will be dealt with in argument at the end of the
10 day, at the end of the presentation of the evidence,
11 but we note your comments.

12 MR. REILLY: Thank you.

13 Q. Mr. Crystal, would you agree that if
14 your position of not having the Board deal with native
15 rights is adopted, in effect, the Board then puts
16 itself in taking the position of affecting these native
17 rights in taking -- perhaps taking away native rights?

18 MR. CRYSTAL: A. Well, at some future
19 point in time those native rights may crystallize in
20 some sort of way. I don't really see it as being
21 practical for the Board to try to predict how that will
22 happen.

23 I think the Board in making its order has
24 to be sensitive of all of the issues that you have
25 raised and all of the issues that were raised yesterday

1 and in making its order, but I don't think it is the
2 appropriate forum for the Board to decide those issues
3 here and now.

4 So I think that what the Board must do is
5 take all this information into account and be sensitive
6 to it and make its order in the context of that
7 information, but I don't think that in any practical
8 way the Board can resolve these issues in this forum.

9 MR. REILLY: That concludes my questions,
10 Mr. Chairman.

11 THE CHAIRMAN: Thank you very much, Mr.
12 Reilly.

13 It is eleven o'clock Mr. Castrilli. I
14 wonder if we might not have just a very short break for
15 ten minutes.

16 MR. CASTRILLI: That would be fine, Mr.
17 Chairman. I have to move material over to the main
18 desk and pick up a box somewhere in the building.

19 THE CHAIRMAN: All right. Well then,
20 let's make it 15 minutes.

21 MR. CASTRILLI: Mr. Chairman, I have a
22 list of exhibits I will be relying on in this panel, if
23 I could give you the list.

24 THE CHAIRMAN: All right.

25 MR. CASTRILLI: (handed)

1 ---Recess taken at 10:55 a.m.

2 ---Upon resuming at 11:30 a.m.

3 THE CHAIRMAN: Thank you, ladies and
4 gentlemen. Completion be seated.

5 We discussed briefly with Mr. Castrilli
6 that the Board is proposing to sit until approximately
7 1:00 p.m. and then we will break for the day so that
8 everyone has an opportunity to perhaps have some lunch
9 before heading out.

10 MR. CASTRILLI: Thank you, Mr. Chairman.

11 Out of the interest of time, I would
12 right at the outset file all or most of my
13 interrogatories as a package and then refer to them
14 throughout my cross-examination of Mr. Kenrick.

15 Mr. Chairman, I would ask that this
16 package of interrogatories - and I will indicate the
17 ones that are missing in a moment - be made the next
18 exhibit.

19 THE CHAIRMAN: Very well. Exhibit 233.

20 ---EXHIBIT NO. 233: Package of interrogatories filed
21 by CELA.

22 MR. CASTRILLI: Mr. Chairman, for the
23 record, the interrogatory questions that are not a part
24 of what is now Exhibit 233 are the following: Question
25 4, 7, 13, 14, 19, 22, 23, 25, and 26. 4 and 14 are

1 already exhibits introduced by Mr. Freidin during his
2 examination-in-chief.

3 In general, Mr. Chairman, many of the
4 responses to our interrogatories on this panel in fact
5 refer us to Panel 7 so we thought it would be
6 appropriate to simply file them as a package.

7 THE CHAIRMAN: Very well.

8 CROSS-EXAMINATION BY MR. CASTRILLI:

9 Q. Mr. Kenrick, actually I will only be
10 asking questions of you.

11 I understand from your testimony that
12 because of the size of Ontario, it is your view that it
13 is logical to break the province up into management
14 units for the purposes of timber management planning;
15 is that correct?

16 MR. KENRICK: A. That's correct.

17 Q. And can you confirm for me that some
18 management units -- some timber management units are
19 smaller than an administrative district?

20 A. That's correct.

21 Q. And some timber management units
22 overlap more than one administrative district; is that
23 correct?

24 A. That's correct.

25 Q. And there are a number of other

1 management -- resource management programs with
2 different spacial or geographic dimensions or land
3 bases; is that correct?

4 A. That is correct.

5 Q. And these would include, for example,
6 wildlife?

7 A. Correct.

8 Q. Could I refer you to -- just in
9 confirmation of that, could I refer you to Exhibit 18,
10 which I believe you have been given notice of. It is
11 our Interrogatories on Panel 1, and refer you to page
12 4.

13 We are looking at what would be your -
14 not your answer - but the Ministry's answer to 7(b) and
15 the Ministry's answer at the time - I presume this is
16 actually Mr. Douglas - was that management plans for
17 certain resources are developed on the basis of
18 standard boundaries, timber management plans are
19 developed on the basis of forest management units as
20 described in the Class EA.

21 Going over to page 5, and as mapped in
22 Appendix 9, and that is to Exhibit 4 of the Class EA
23 document.

24 "Fisheries management plans are developed
25 for each MNR administrative district,

1 management plans for provincial parks are
2 prepared for each park for the area
3 within the park boundaries and management
4 plans for other resources are developed
5 where needed according to decisions made
6 at the district and regional levels of
7 MNR."

8 And then the last sentence on top of page
9 5:

10 "The areas for which these plans are
11 developed are determined according to the
12 local circumstances and requirements."

13 Now, as I recall, that answer was
14 actually prepared by Mr. Douglas or perhaps Mr. Douglas
15 and Mr. Monzon in response to our Panel 1
16 interrogatories. Do you adopt that statement that I
17 have just read into the record?

18 A. Yes.

19 Q. Thank you. And would it be fair to
20 say that these various management units or the various
21 types we have been referring to overlap each other?

22 A. Yes.

23 Q. Can I ask you: Is it your testimony
24 that it is logical for the Ministry of Natural
25 Resources to break up the province into different

1 management units for fish, for wildlife and the other
2 resources?

3 A. Is it logical?

4 Q. Yes.

5 A. Yes.

6 Q. And is it logical for the Ministry to
7 break up the province into administrative districts
8 which may have different geographic dimensions from
9 these other resource units we have been talking about?

10 A. Given that there are a host of
11 different resource management units with different
12 configurations, yes, I believe the boundaries for
13 administrative districts were responsive to travel
14 distances, location of population and road systems at
15 the time that they were set up. I would agree that is
16 a logical way of determining them.

17 Q. That is not quite my question. I am
18 asking: Is it logical for all this individual
19 program -- resource program planning for different
20 resources to occur on the same land base when each
21 resource manager is using a different map?

22 A. I believe it is necessary to do it.
23 If I can give you a couple of illustrations why I feel
24 that way. A forest, the boundaries of a forest
25 management unit may be responsive to licensed

1 boundaries, to road systems, access to the mill,
2 whereas a wildlife management unit boundary may be
3 responsive to something else.

4 It gives us some internal difficulties
5 occasionally trying to compare data across management
6 unit boundaries. But in that particular case that I
7 quoted, where trying to take forest management
8 information and, for instance, moose management
9 information and correlate, we have made some attempts
10 to try and stratify the moose information such that it
11 can be applied and give you conclusions within the
12 boundary of the forest management unit.

13 It is more difficult, but I believe there
14 are some logical reasons for the boundaries of each of
15 those particular management units and, in some cases,
16 those considerations are more important to the
17 management of that particular resource than merely
18 searching for consistency of boundaries.

19 Q. Well, is it your testimony that these
20 differing geographic boundaries and maps for the
21 various management units we are talking about, such as
22 timber, fish, wildlife, just to name three, contribute
23 to proper management of the land resources of the
24 Crown?

25 A. I will provide a yes and no answer.

1 I am sorry for doing it, but for the purposes of
2 managing wildlife I think the boundaries of the
3 wildlife management units and the way we have used them
4 are logical. For the purpose of managing timber
5 resources, I believe the boundaries of those plans are
6 logical.

7 If your question is: Would it solve
8 some -- would it make it somewhat easier if they were
9 all the same, it would certainly solve some problems in
10 terms of trying to compare data, I agree with that.
11 But there are some other considerations there and I
12 think the other considerations are valid.

13 Q. Well, is it your testimony we are
14 better off with the management system we have or is
15 there a better way to manage the land base?

16 A. It would be nice if, without
17 sacrificing some of the reasons that we have our
18 boundaries now, if all of the management activities
19 occurred on a common boundary.

20 From a planning perspective that would
21 help me, but I very much value and respect the
22 rationale that is used for the boundaries that are
23 there now and I think it is a bit of a tradeoff.

24 THE CHAIRMAN: Can there be, in your
25 view, a better way to manage the land base which will

1 accomplish the former goals, the goals of the present
2 system and utilizing a common land base? In your view,
3 is there a way, not necessarily what that way is, but
4 is it possible to bridge those goals?

5 MR. KENRICK: If it is possible to
6 stratify the data so that you can transfer it for
7 pieces of the unit so you can be comparing the amount
8 of resource -- of one resource product on one unit with
9 another resource product on the same unit. As much as
10 data can be stratified, that would help as opposed to
11 just shifting all the boundaries around.

12 MR. CASTRILLI: Q. Perhaps I can shorten
13 this up. Mr. Kenrick, I am showing you an article that
14 appeared in the June, 1988 edition of the Forestry
15 Chronicle, actually a Conference Sponsored by the
16 Ministry of Natural Resources on Forestry and Wildlife
17 Management in the Boreal Forest, an Ontario Workshop.
18 Are you familiar with that document?

19 MR. KENRICK: A. Yes I am.

20 Q. It is an article that you wrote; is
21 that right?

22 A. That's correct.

23 MR. CASTRILLI: Mr. Chairman, I ask this
24 be the next exhibit.

25 THE CHAIRMAN: Exhibit 234.

1
2 ---EXHIBIT NO. 234: Article appearing in June, 1988
3 edition of Forestry Chronicle,
4 entitled: Conference Sponsored by
5 the Ministry of Natural Resources
6 on Forestry and Wildlife
7 Management in the Boreal Forest,
8 Ontario Workshop.

9
10 MR. CASTRILLI: Mr. Kenrick, this article
11 has a nice -- I am sorry, Mr. Chairman, this is
12 exhibit...?

13 THE CHAIRMAN: 234.

14 MR. CASTRILLI: Q. Now, Mr. Kenrick, on
15 the page -- just beginning on the first page after the
16 page with the moosehead on it, I am looking at the
17 first paragraph under Consultation and Communication,
18 left-hand column, page 290.

19 MR. KENRICK: A. Mm-hmm.

20 Q. The third sentence in that paragraph
21 beginning: "We discussed..." and I gather this was a
22 workshop at which you were a repertoire, or at one
23 point or another.

24 "We discussed the possibility of having
25 two plans, one for wildlife and one for

1 timber and although there were several
2 views on this there was a consensus that
3 because the forest and habitat are the
4 same thing it would be illogical to plan
5 separately for each product of the
6 forest. The habitat element in wildlife
7 and forestry must be considered in the
8 same plan."

9 Do you agree with that?

10 A. Right, correct.

11 Q. You do. Is that consistent with your
12 earlier testimony this morning?

13 A. I believe it is if you take it
14 together with a paragraph that is at the top of the
15 second -- the following page.

16 Q. Sorry, where are you referring to?

17 A. The first paragraph on the last page
18 you handed me, 291.

19 Q. Oh, we are going to come to that
20 paragraph.

21 A. Given that qualifier, I agree I think
22 the two statements are consistent.

23 Q. Let's actually turn to that
24 paragraph. I believe you are referring to the first
25 paragraph on the top left-hand side of page 291?

1 A. That's correct.

2 Q. That paragraph reads:

3 "The need for a common geographic base
4 for our data was also recognized..."

5 And then skipping a sentence:

6 "...common management unit boundaries are
7 one solution. But regardless of the
8 boundaries we choose, we have to collect
9 our data so it can be aggregated and
10 mean something on the other person's land
11 base."

12 Now, I first wanted to ask you: Does the
13 Ministry of Natural Resources have a common geographic
14 land base for data development now?

15 A. Not an automated system. We are
16 working on the geographic information system that is
17 noted there but it is not in place. There are some
18 prototypes, if you will, developmental projects ongoing
19 right now.

20 Q. Now, I am interested in particular on
21 the -- or respecting the third sentence in that
22 paragraph. You outline that common management unit
23 boundaries are one solution, so clearly that is a
24 solution but -- is that correct?

25 A. Yes. Just to put into context, I

1 guess the paper, I was reporting on deliberations of
2 people that represented the Ministry and World Wildlife
3 Fund and a host of other groups that were at this.
4 Those were some of the thoughts that went through the
5 committee that I chaired.

6 There was also, as you can gather from
7 the conclusions that I am reflecting of the group,
8 there was more consensus in that group that common
9 management unit boundaries are one possible solution,
10 but given there is some other rather logical reasons
11 for management unit boundaries for whatever product, if
12 you are talking about that there may be an easier way
13 of solving the problem and, that is, being able to use
14 a system like the geographic information system that
15 allows us to take inventory information from any form
16 of data collection program and apply it to any polygon
17 that would be a management unit.

18 Q. Well, that is the part of that
19 paragraph that I wanted to focus on. The problem I am
20 having with understanding the paragraph and, first of
21 all, let me go back to my first question which I don't
22 think I actually had an answer to you.

23 You agree that common management unit
24 boundaries are one solution to the problem; is that
25 correct? It may not be your preferred solution, but it

1 is a solution; is that a fair statement?

2 A. It is one worth considering. The
3 fact that this group and I, and I assume others, have
4 given to it, I think there is a better solution. But
5 if I was putting all of the options on the board I
6 would put that one there too.

7 Q. That is fine, thank you. Now, just
8 on the last part of that sentence which reads:

9 "But regardless of the boundaries we
10 choose, we have to collect our data so it
11 can be aggregated and mean something on
12 the other person's land base."

13 That is the part of the sentence I don't
14 quite understand and perhaps it is because I don't
15 understand the nature of the geographic information
16 system that is either -- I guess still being developed.

17 But my question to you is: How can the
18 Ministry of Natural Resources collect data on one land
19 base and apply it on another?

20 A. Perhaps if I could use one of the
21 boards behind me here to draw a diagram.

22 Q. Be my guest.

23 A. I am thinking of an analogy --.

24 THE CHAIRMAN: Would you kindly speak up
25 as loudly as you can, Mr. Kenrick.

1 MR. KENRICK: I am thinking of a parallel
2 to winter moose surveys that the Ministry undertakes
3 where this is the area of the management unit that is
4 inventoried for purposes of moose. This is, of course,
5 a management unit, it is inventoried in terms of its
6 forest or timber stock.

7 But what I think we need to be able to
8 improve is to be able to capture what portion of the
9 inventory, of this inventory, was on this base given
10 that there is another management unit here.

11 So to get, if you will, the moose
12 population on this area you need to be able to
13 aggregate the overlaps here, the overlaps here and
14 there will be overlaps around the centre.
15 (indicating)

16 Right now, with some types of information
17 we can do it. I think the point that is being alluded
18 to there is it is cumbersome because it's not
19 automated. It is possible to stratify, as I understand
20 it, the results of the moose survey to do this to some
21 extent.

22 Q. All right. Perhaps, Mr. Kenrick, you
23 can stay at the tripod. You are talking about a moose
24 survey. I am not sure exactly what you mean. Do you
25 mean a systematic survey or a one-shot survey?

1 A. Visually counting moose.

2 Q. All right. But you are not saying
3 there are moose management habitat guidelines which are
4 geographically different; are you, because there are
5 no -- my understanding - and correct me if I'm wrong -
6 there are no moose management management units?

7 A. No, there are wildlife...

8 Q. There are wildlife management units,
9 that's right and there are also fish management units?

10 A. That's correct.

11 Q. And park management units. So that
12 we are not just talking about -- in the little circles
13 you have drawn there, you have just overlapped a
14 forest, a timber management unit with a wildlife
15 management unit, but they would also be the
16 administrative district.

17 Now, where is this geographic information
18 service actually generating its information from; is it
19 generating it from a unit basis or from the district
20 basis?

21 A. Ideally in such a system is that you
22 could capture the information from any survey, if you
23 wish, for any polygon that you wanted there.

24 I could keep adding different various
25 forms of management units. That being a district line,

1 it was important to make a management decision to know
2 the type of information that would be common with only
3 this district, only this management -- this wildlife
4 management unit and only this forest management unit,
5 that I would be able to capture now just that piece of
6 information.

7 One of the reasons that I find there is a
8 great deal of difficulty is that the reasons we use
9 information are so varied that seldom are you asked to
10 produce some information on the same combination of
11 polygons. One person wants to know this type of
12 information, the other one wants to know this
13 information, just the nature of the magnitude of the
14 stuff we collect as a Ministry.

15 Q. Okay, that is fine. I understand
16 your answer. And the question I really have, because
17 this tribunal is charged with dealing with the issue of
18 timber management per se, it has got to -- it has also
19 to deal with the impacts on other values of the forest
20 and my question really relates to whether it would not
21 in fact be better if one were trying to protect
22 wildlife to use the same instrument or plan as you were
23 using to manage timber.

24 And what is your answer to that?

25 A. I think my answer already to that

1 that I have given you is that the reality is we have
2 got a host of things we are out there managing and it
3 isn't as simple as only two programs.

4 If all we had to do was reconcile two
5 sets of boundaries, I think we could probably do it.
6 But that doesn't solve the problem about watershed,
7 conservation authority boundaries, municipal
8 boundaries, Ministry boundaries, wildlife boundaries,
9 park boundaries and a whole host of other ones.

10 Q. Well, you have led me to a question I
11 was going to ask you: What is the logic of the forest
12 management units that they should not be changed?

13 A. Perhaps the -- someone, a forester is
14 better equipped to explain the rationale for forest
15 management unit boundaries. The obvious one is they
16 follow licence boundaries.

17 Q. That is the only --

18 A. Experience would tell me that it also
19 follows road systems. They may be historical,
20 developed, links between existing roads and the mill.
21 It would be equally as illogical for the management
22 unit not to reflect patterns like that.

23 Q. Let me ask you this: What
24 constraints could you reasonably expect the logger to
25 accept - let's just for an example - with respect to

1 wildlife, if they were not required by the timber
2 management plan but happened to exist, for example, in
3 the wildlife management plan?

4 A. If I understand your question, if it
5 was a condition of -- if the constraint was a concern
6 that came out of plan A of the Ministry's as opposed to
7 plan B of the Ministry's, when we are reviewing plan A
8 and the operations that would go on under it, we would
9 take into consideration those things collected in plan
10 B or reflected in plan B.

11 In that case, it may well be a condition
12 of approval, something that was noted as a source of
13 information or a type of concern from the wildlife
14 management plan. On a regular basis we do that. There
15 are fisheries issues addressed only in fisheries
16 management plans that -- you know, a spawning bed site,
17 for instance, and we draw that information out of one
18 exercise and, to some extent, it reflects some
19 conditions we place on the forestry operations.

20 Q. Right. But right now, without your
21 geographic information system in place, you are in fact
22 attempting to collect data on one land base and apply
23 it on another and, in fact, you are doing a series of
24 really overlays, aren't you, depending upon the number
25 of management plan resources you are dealing with;

1 isn't that right?

2 That is a very difficult thing for you to
3 do; is that not true?

4 A. It is difficult, yes. It is time
5 consuming.

6 Q. And it may also not be effective?

7 A. I question what you are saying about
8 collecting information on piece of land A and applying
9 it to piece of land B. Maybe I just don't understand
10 the question, but on my diagram there what I wasn't
11 intending was that you take a piece of information that
12 was outside the overlapping circles and generally try
13 and apply it inside. It is just that the survey
14 included everything within one of the circles.

15 Q. Let's move on. Now, we asked you, as
16 part of our interrogatories, what were the -- sorry,
17 let me refer you, it is the first question on what is
18 now Exhibit 233.

19 MR. FREIDIN: What exhibit?

20 MR. CASTRILLI: Sorry, Exhibit 233, it is
21 our interrogatories. It is the first one, Question 1.

22 Q. All right. Mr. Kenrick, I am
23 referring to Question 1 of what is now Exhibit 233. We
24 asked you, as part of that interrogatory, what the
25 total amounts in hectares and square kilometres were of

1 provincial parks and areas of natural and scientific
2 interest, also known as ANSIs, in the area of the
3 undertaking.

4 And your answer, which in part can be
5 found in what would be answer B on that first page, was
6 that for provincial parks the figure was 15,550 square
7 kilometres as of 1987; is that right?

8 MR. KENRICK: A. That's correct.

9 Q. Would you agree with me that that
10 would be approximately 3 per cent of the area of the
11 undertaking, using the 465,000 square kilometre figure?

12 A. Subject to your math, yes.

13 Q. Okay, if you accept my math. Now,
14 your answer did not provide us with a comparable figure
15 for the area encompassed by ANSIs within the area of
16 the undertaking. Is it your testimony that the
17 Ministry does not know the total area encompassed by
18 ANSIs within the area of the undertaking?

19 A. I understood the question. I believe
20 we do. I think they have got definition to them,
21 particularly the designated ones. But I interpreted
22 this question being a reference back to where they sit
23 in the FRI system and I believe the point is made that
24 they are not a separate ownership code, and I refer you
25 to Mr. Armson's evidence, therefore that number can't

1 be drawn out of that table.

2 Q. Well, I will accept that you can't
3 draw it out of the table. My question is: Does the
4 Ministry of Natural Resources know what the total area
5 is in the area of the undertaking for ANSIs? I don't
6 think it is a question that is dependent upon knowing
7 ownership.

8 A. I believe we do, but perhaps the
9 people in Panel 7 could better address that.

10 MR. CASTRILLI: Mr. Freidin, is that your
11 understanding, the people in Panel 7 will be able to
12 answer that question as well?

13 MR. FREIDIN: Yes, they will be better
14 able to answer that question.

15 MR. CASTRILLI: Thank you. I will wait.

16 Q. Mr. Kenrick, if I could just ask you
17 to return to what is Exhibit 234, your article. We are
18 looking now at the next to last paragraph on the
19 right-hand side of the page, page 291. The last
20 sentence you ask a question:

21 "There is a general hypothesis that we
22 can manage for most wildlife by managing
23 for moose. "

24 And you ask the rhetorical question: Is
25 this really so? Is it your position that we cannot in

1 fact manage wildlife by managing for moose?

2 A. No, again, I was reflecting some
3 questions that were raised by the group.

4 Q. Well, is it your position that we can
5 manage wildlife by managing for moose?

6 A. Perhaps that approach had best be
7 asked of Panel No. 7.

8 MR. CASTRILLI: Mr. Freidin, is that your
9 understanding, Panel 7 will be in a position to answer
10 that question?

11 MR. FREIDIN: There will be people on
12 Panel 7 that can direct their minds to that matter.
13 There will also be a witness in Panel No. 10 in
14 relation to harvest and potential effects of harvesting
15 who will be able to deal with that matter.

16 MR. CASTRILLI: Thank you. Panel 7 and
17 Panel 10?

18 MR. FREIDIN: Yes.

19 MR. CASTRILLI: Thank you.

20 Q. Mr. Kenrick, generally would you
21 agree with me that wetlands are important biological
22 communities?

23 MR. KENRICK: A. That is my
24 understanding.

25 Q. Would they be important in relation

1 to such matters as maintaining water quality?

2 A. One of their purposes, that is my
3 understand.

4 Q. Maintaining species diversity?

5 A. One of their purposes, that is my
6 understanding.

7 Q. Prevention of flooding?

8 A. Yes.

9 Q. Provision of food sources and habitat
10 for various birds, animals and fish?

11 A. Yes.

12 Q. Can you advise where in your report
13 you deal with the issue of wetlands in the area of the
14 undertaking?

15 A. I don't think I did specifically and
16 I think it is a matter of, again, level of detail. I
17 am not sure that I dealt specifically with any other
18 habitat type at that -- with grasslands and/or any
19 other areas.

20 Q. Let me ask you the obvious question:
21 Which panel will deal with wetlands?

22 A. I believe Panel 7 will talk about the
23 nature of information we collect and I assume it
24 includes wetlands or -- wetlands.

25 MR. CASTRILLI: Mr. Freidin, can you

1 confirm Mr. Kenrick's understanding?

2 MR. FREIDIN: That is my present
3 understanding.

4 MR. CASTRILLI: I am sorry, were you
5 going to say more?

6 THE CHAIRMAN: How about your future
7 understanding?

8 MR. CASTRILLI: I am sorry, Mr. Freidin,
9 were you finished?

10 MR. FREIDIN: I was trying to determine
11 whether it is going to be in all the panels as opposed
12 to one. It will be addressed in Panel No. 7 and,
13 again, may be dealt with in the panel which deals with
14 effects or potential effects of each of the activities.

15 MR. CASTRILLI: Thank you.

16 Q. Now, just so that I understand, and
17 maybe so that you understand what I am after so perhaps
18 the witnesses in Panel 7 can direct their minds to that
19 and I presume, Mr. Kenrick, you are not going to be in
20 a position to answer this question.

21 Does the Ministry of Natural Resources
22 know how many wetland areas are within the area of the
23 undertaking; is that a question you can answer?

24 MR. KENRICK: A. No.

25 Q. Do you know what the percentage of

1 the area of the undertaking is that constitutes
2 wetlands?

3 A. Not precisely, no.

4 Q. Has the Ministry -- sorry?

5 A. I am sorry. The point I guess I
6 would like to make is that I don't think that is the
7 same as not being aware of the value.

8 In our own region right now I know we
9 have just undertaken a joint project with Ducks
10 Unlimited and I believe another party to do
11 specifically a wetland inventory.

12 Whether I can put a number on how many
13 hectares there are of wetlands, given you could give me
14 a very precise definition how to describe them in the
15 first place, I doubt whether that exists.

16 Q. Has the Ministry done an inventory of
17 wetland areas within the area of the undertaking,
18 inventory or inventories?

19 A. My understanding is that in terms of
20 comprehensive, my understanding would be, no. I am
21 aware of some work that has been done with earth
22 symmetry LANDSAT information. Wetland habitats are a
23 component of some of the other inventories that we do.
24 Now, whether that covers all of them, I would doubt it.

25 Q. Has the Ministry of Natural Resources

1 classified northern Ontario wetlands within the area of
2 the undertaking as it has for southern Ontario
3 wetlands?

4 A. No and I am sure you are aware of the
5 reason for that classification system was to deal with
6 what was viewed as more threatened wetlands in southern
7 Ontario first.

8 Q. Well, it was to deal with the
9 situation under the Planning Act. Is it your testimony
10 northern wetlands are not threatened?

11 A. In my experience, sir, some of the
12 more major threats to wetlands that I have seen have
13 been a result of agricultural practices, urbanization
14 and drainage and those practices are not as extensive
15 in the north.

16 Q. Can wetlands be adversely affected by
17 timber management options?

18 A. Done improperly, I would say yes.

19 Q. Thank you.

20 A. Done correctly I would say no, if you
21 mean negatively impacted upon.

22 Q. Sorry, I meant adversely impacted.
23 And your answer is: Yes, they can be adversely
24 impacted by timber management operations; is that
25 correct?

1 A. No, that wasn't what I said. I said
2 if timber management operations occurred, if you will,
3 improperly and not with the appropriate amount of
4 sensitivity of those values, I assume they could have a
5 negative one, but I would like to think our process
6 addresses that.

7 Q. Well, that wasn't my question. So
8 your answer is improper timber management can adversely
9 affect wetland areas; is that correct?

10 A. That's correct.

11 Q. I would like to refer you to exhibit
12 5A. Sorry, I will refer you to the page. I am
13 referring initially to pages 13 and 14, the page
14 numbers being at the bottom right-hand side of the
15 page.

16 And as you will recall or as you may
17 recall, this is an attachment to a memorandum -- sorry,
18 a series of memoranda between the Ministry of
19 Environment and the Ministry of Natural Resources dated
20 May 5, 1988 that actually begins at page 7 but I am not
21 going to be referring you to page 7.

22 Now, the third paragraph states:

23 "The following list --"

24 Do you have the paragraph?

25 A. Yes, I do.

1 Q. "The following list is not meant to
2 be all inclusive but represents the type
3 of existing information which is normally
4 available for any management unit in the
5 province."

6 And then turning to page 14, you will see
7 that on the third listed item on the page Classified
8 Wetlands, Southern Ontario.

9 Can you confirm for me, Mr. Kenrick, that
10 the Ministry of Natural Resources has not classified
11 northern Ontario wetlands or wetlands in the area of
12 the undertaking?

13 A. It is my understanding that the
14 classification system was not designed for the north,
15 and I believe that classification process has not gone
16 north -- gone on in northern Ontario.

17 Q. Okay. Can I take it from the absence
18 of a reference to wetlands in the north that this is
19 the sort of information that is not normally available
20 for any management unit in the province, or let's
21 restrict it to the area of the undertaking?

22 A. Again, I can give you an
23 illustration. The fact that the formal classification
24 system wasn't designed for the north, I don't think
25 means that the wetland values are not recognized.

1 Q. That is not my question, Mr. Kenrick.
2 I am not talking about whether the Ministry of Natural
3 Resources recognizes the values of wetlands, I am
4 talking about whether they can identify their location,
5 their quantity and their size.

6 Now, this memorandum does not list
7 wetlands for the north; is that right?

8 A. That is correct.

9 Q. Can we take it, therefore, that
10 northern Ontario wetlands, classified or unclassified,
11 are not normally information which is available for any
12 management unit in the area of the undertaking, yes or
13 no?

14 A. In a summary form I would say no.
15 But, again, if staff has input into a timber management
16 plan had a concern about the effect on a wetland, and I
17 think staff having done some field work in preparation
18 for that plan would have recognized a wetland, there
19 are resources available to them and, in this case, it
20 is a water fowl biologist in the region that I am
21 familiar with that is prepared to go out and make some
22 decisions about the significance of the wetland area.

23 Q. Would it be a fair statement, Mr.
24 Kenrick, that the Ministry of Natural Resources does
25 not intend to produce an inventory of wetland areas

1 within the area of the undertaking as part of its
2 evidence in this hearing?

3 A. I am not sure I could guess what the
4 future plans of the Ministry are in that regard.

5 MR. FREIDIN: That is correct.

6 MR. CASTRILLI: Thank you.

7 Q. Now, Mr. Kenrick, I understand from
8 your evidence that the Atlas of Rare Vascular Plants of
9 Ontario is the most up to date and accurate treatment
10 of rare native plants in the province; is that correct?

11 MR. KENRICK: A. That is my
12 understanding.

13 Q. Sorry, why don't I, for ease of
14 reference, refer you to page 62 of your evidence.

15 MR. CASTRILLI: Mr. Chairman, we are
16 looking at paragraph 2.

17 THE CHAIRMAN: Thank you.

18 MR. CASTRILLI: Q. And from your
19 evidence, I understand that after a species by species
20 review of 940 native species, 542 were identified by
21 the authors of the atlas as rare; is that correct?

22 MR. KENRICK: A. That is my
23 understanding.

24 Q. And I also understand from your
25 evidence that there has been -- or there have been

1 relatively few of these species, or relatively few of
2 these species are species of forest habitats in the
3 area of the undertaking; is that right?

4 A. Yes, and I can provide some numbers.

5 Q. Well, actually you already have. In
6 your response to our Interrogatory Question 3 - and I
7 am again now referring to Exhibit 233 - it would
8 actually be the third page. Sorry, have you got that
9 page now?

10 A. Yes, I do.

11 Q. I simply quoted the sentence I just
12 read into the record and I asked you what the source
13 for that statement was and you indicated it was a
14 regional ecologist in the central region and we asked
15 you to provide us with a list of the relatively few
16 species referred to in the sentence found at page 62 of
17 your evidence.

18 And your answer is to be found in item
19 B -- or answer B on page 3 of Exhibit 233 and the
20 answer is as follows:

21 "There are 155 species in the area of the
22 undertaking and the list being derived
23 from the Atlas of Rare Vascular Plants
24 of Ontario."

25 And then you noted that:

1 "It is currently in preparation and will
2 be sent to you as soon as possible."

3 And the Ministry has been in fact kind
4 enough to provide me with the full list, and I have a
5 number of questions about the list.

6 MR. CASTRILLI: And what I propose to do,
7 Mr. Chairman, is just introduce one page, subject to
8 the witnesses being able to verify this is what he
9 actually provided to me.

10 Q. Do you recognize that as an excerpt
11 from the material you prepared on rare vascular plants
12 in the area of the undertaking?

13 A. Yes.

14 MR. CASTRILLI: Mr. Chairman, I would ask
15 this be made the next exhibit.

16 THE CHAIRMAN: Exhibit 235.

17 ---EXHIBIT NO. 235: Photocopy page of list of rare
18 vascular plants in Ontario.

19 MR. CASTRILLI: Mr. Chairman, what you
20 have before you now in what is Exhibit 235 is just the
21 cover page of the material that was provided to me and
22 the first page of the document.

23 Q. Now, Mr. Kenrick, turning to the only
24 page that really truly constitutes Exhibit 235, you
25 list in column form, at the top of the page it is

1 identified as rare vascular plants in the area of the
2 undertaking, and then in the top horizontal column you
3 identify the species by both its Latin and common name,
4 the habitat - where it is located, I presume - the
5 total number of locations, the number of post-1964
6 locations and the reasoning -- in the last column, the
7 reason species is assumed not subject to timber
8 management.

9 And it is with respect to this last
10 column that I have a question. Can you advise the
11 Board what you mean and what MNR means by this last
12 column?

13 A. My understanding is that perhaps not
14 subject could better be read as not impacted upon. If
15 I can just explain the difference. Those columns are
16 basically blank I believe for most of them.

17 Q. That's correct.

18 A. And partially because that wasn't
19 part of your interrogatory in the first place and we
20 decided not to go to that level of detail, but your
21 question was the number of species that are in forest
22 habitats, and the information that was provided was the
23 number of species within the area of the undertaking.

24 The response: 155 species based on the
25 scale of mapping that is in that atlas that occur

1 within the area of the undertaking. It is my
2 observation, having talked to Mr. Reilly who compiled
3 this for me, that there will be types of habitats
4 inside the undertaking that are not forest habitats.

5 He quoted, for instance, areas of cliffs
6 and talus slopes or some aquatic habitats that normally
7 forest management activities do not occur on and
8 probably would not impact upon.

9 Q. So to properly understand the column,
10 it would be more accurate to re-describe it as reasons
11 species is assumed not to be impacted by timber
12 management. Would that be a fairer way of
13 characterizing what the column was meant to do?

14 A. That's correct. I believe that is
15 what Mr. Reilly was intending.

16 Q. Okay. Now --

17 A. Given the vagaries of defining
18 impacted and not impacted, making decisions based on
19 the information he had, like all cliffs would not be
20 impacted upon, that may be not be true, but it is also
21 an explanation why the column is blank, it wasn't used.

22 Q. Now, having said that, I see four
23 items down on that page, the Handsome Sedge, also known
24 as Carex Formosa, for those of us who once took Latin.

25 You will see that its habitat is defined

1 as forests. Now, to the uninitiated, Mr. Kenrick, it
2 would seem to me that there would be a potential for
3 the Handsome Sedge to be impacted by timber management
4 if it takes -- if it is to be found in forests?

5 Would that not be a fair assumption?

6 A. I would assume so, given the
7 information there. I am not familiar with the Handsome
8 Sedge.

9 Q. Frankly, neither am I, but would you
10 not agree, therefore, that that column could well in
11 fact have to explain how the Handsome Sedge would not
12 be impacted since it is found in forests?

13 A. So your proposition is there should
14 be something written in the last column there?

15 Q. To explain why the authors of this
16 document, which is now Exhibit 235, believe that the
17 Handsome Sedge is a species one can assume will not be
18 impacted by timber management.

19 A. And I believe my response was the
20 last column was not used period, in this information.
21 If you look through the whole paper, I think you will
22 find --

23 Q. There are four places where they are
24 identified.

25 A. That's true. In Pukaskwa Park?

1 Q. That's right, a provincial park at
2 Quetico, a national park at Pukaskwa, off-shore islands
3 and Indian reserve lands and every other column is
4 blank, except for those four.

5 A. That is correct.

6 Q. So there was some attempt to actually
7 fill in the blanks.

8 A. Well, I think only where it was
9 viewed to be, in Mr. Reilly's --sort of outside the
10 area of the undertaking. His understanding is Pukaskwa
11 Park is a federal park is not within the boundary of
12 the undertaking.

13 Q. Okay. Let's go down the column
14 further on Exhibit 235. You see there the Sedge, the
15 Latin for which I will not try, and you will see its
16 habitat includes bogs, muskegs and black spruce
17 forests.

18 Now, is it your testimony that the Sedge,
19 having been found in black spruce forests within the
20 area of the undertaking, is a species that is to be
21 assumed not to be impacted by timber management
22 operations?

23 A. No. What I am saying is that answer
24 is not -- that question is not answered at all in the
25 information in response to your interrogatory, nor was

1 that the question in the interrogatory in the first
2 place.

3 Q. That is fine. Now, as I recall from
4 your evidence, page 62, I thought the drift of the
5 third paragraph of your evidence was that, first of
6 all, there were relatively few rare vascular plants in
7 forest habitats in the area of the undertaking, and
8 then we discover there are actually 155.

9 And now I assumed, continuing with
10 paragraph --

11 A. Just to clarify something, there are
12 155 within the area of the undertaking, some of which I
13 assume are within forest habitats, given the definition
14 of forest may exclude aquatic habitats, for instance.

15 Q. Well --

16 A. It depends on your definition of
17 forest.

18 Q. Well, I was using your terms, Mr.
19 Kenrick. I asked you very clearly, what was the source
20 for the statement: There are relatively few species of
21 forest habitats in the area of the undertaking.

22 And you told me who the source was. And
23 then I asked you: What were the relative few species
24 you were referring to, and you said in this document
25 155 species. So I must take it that that is what you

1 are --

2 A. Are within the area of the
3 undertaking.

4 Q. And are in forest habitats within the
5 area of the undertaking?

6 A. Well, the answer to the interrogatory
7 didn't say that, with all respect, sir, it said and I
8 quote: "there are 155 species in the area of the
9 undertaking."

10 Q. All right. So how many species are
11 species of forest habitat in the area of the
12 undertaking which is, I thought, a question I asked two
13 months ago in my interrogatory?

14 Right now you have given me a number of
15 155 and you say that is not the answer to my question.
16 Well, with respect, it is the question I asked you two
17 months ago in the interrogatory.

18 A. I don't have that number. Could you
19 define for me forest habitats?

20 Q. With great respect let's use your
21 terminology. It is in your report, you ought to know
22 what you mean.

23 If it is something you actually have to
24 spend some time doing, I would be content for you to
25 give me the answer on September 26th.

1 A. I guess my concern is the only
2 information I have got at my disposal is this level of
3 detail which is an overview, and if it takes any
4 greater level of detail like going into the computer
5 records that are behind this atlasing exercise, it
6 can't be obtained by September the 26th.

7 THE CHAIRMAN: Well, Mr. Kenrick, it is
8 going to be less than 155; is that correct?

9 MR. KENRICK: That would be my opinion,
10 yes. But unfortunately you have to go back through, I
11 believe -- I suppose you could use this list of data,
12 first of all, but you would have to go through this
13 list.

14 THE CHAIRMAN: Mr. Castrilli, he referred
15 in his witness statement I guess on page 62, relatively
16 few and I take it you are bringing out the point that
17 he then provided an answer of 155 and, given a further
18 questioning, it may be in fact that the species which
19 have a habitat in the forest are less than 155.

20 MR. CASTRILLI: That seems a fair
21 assumption.

22 THE CHAIRMAN: Suppose that he comes up
23 with a number, what is the significance of that number
24 to you?

25 MR. CASTRILLI: Well --

1 THE CHAIRMAN: Other than perhaps
2 pointing out that, in your opinion, 155 or 132 or any
3 some such number would not be properly described as
4 relatively few?

5 MR. CASTRILLI: Well, that is the bottom
6 line. But beyond that, the exhibit itself - and I have
7 only produced the first page - but the entire document
8 itself actually is quite an interesting little document
9 and it seems to me that that is the kind of information
10 that is important to consider when we are talking about
11 what is the environment affected by timber management
12 operations.

13 Actually I would have thought that kind
14 of information would have been available.

15 THE CHAIRMAN: Well, it may well be
16 important, but I guess what the Board is trying to get
17 at is: If it requires an exhaustive search through
18 computer records to provide the information, for what
19 purpose will that information be used?

20 Are we going to be looking at each and
21 every specie and are you going to have questions on
22 each and every specie and, if so, that is something for
23 the Board to determine whether or not that is really
24 relevant in the terms of getting into that kind of
25 specific detail, or are you going to have generalized

1 questions dealing with the fact that the data relating
2 to rare species does not appear to be easily available?

3 MR. CASTRILLI: Well, I would frankly be
4 content for Mr. Kenrick to fill in the blanks, I would
5 be satisfied with that. And when I mean fill in the
6 blanks, I mean fill in the blanks of exhibit -- well,
7 it would have to be the entirety of the document. I
8 have only reproduced as an exhibit, one page of, in
9 Exhibit 235.

10 THE CHAIRMAN: But in order to do that
11 they would have to go through all of the records to
12 determine which of the 155 have a forest habitat and
13 then go further to decide which of those species in
14 that category may be adversely impacted by timber
15 management activities; is that not correct?

16 MR. CASTRILLI: Well, they have already
17 identified -- Mr. Chairman, each of the pages in the
18 document are like the page I reproduced in Exhibit 235.
19 They have already identified the habitats.

20 I think it would be a relatively simple
21 process for them to make a determination one way or the
22 other which of those species are in fact impacted or
23 not. Remember, Mr. Chairman, we are talking about rare
24 plants, we are not talking about common garden variety
25 grass.

1 THE CHAIRMAN: All right. The Board has
2 just held a brief conference on that and feels that it
3 is relevant, since the topic is dealing with rare
4 species, to be advised what in the Ministry's opinion
5 would be the potential adverse impact of those species
6 which have a forest habitat.

7 You have already delineated what the
8 species are, you have already described the habitat, so
9 it would just be a matter of going to the number in
10 that category and determining whether or not they might
11 be subject to adverse impacts.

12 MR. CASTRILLI: And, Mr. Chairman, I
13 would also be content if this were to be dealt with in
14 Panel 7; the two panels do have a link.

15 THE CHAIRMAN: Well, you can do it one
16 way or the other: You can either submit a
17 supplementary interrogatory answer, or an answer to
18 this interrogatory providing that information, and then
19 you could deal with it in Panel 7 or, conversely, bring
20 it up in Panel 7, but it would probably be more
21 efficient to deal with this kind of data by way of
22 providing a supplementary answer.

23 MR. KENRICK: I am just not clear on
24 whether -- I thought your question was how many of the
25 155 that are on this list are found in the forest

1 habitat.

2 And I understand the way you worded it,
3 Mr. Chairman, is how many could be adversely affected
4 by forestry operations. Are those the same questions?

5 THE CHAIRMAN: Well, Mr. Castrilli, I
6 think is asking you to fill in the blanks on the last
7 column.

8 MR. CASTRILLI: For all 155 plants that
9 are in the document he has already prepared, of which I
10 have only filed one page as Exhibit 235.

11 THE CHAIRMAN: Well, just hold on a
12 moment. I thought we were dealing with the ones that
13 would only be within a forest habitat, not the whole
14 155.

15 MR. CASTRILLI: I am sorry, for the ones
16 that are in forest habitats that are part of that, I
17 presume if it is not 155 or whatever.

18 I mean he is going to be using the same
19 document and this time he is simply going to fill in
20 the blanks that apply to forest habitat. So you are
21 right, it is less than -- presumably it will be less
22 than 155.

23 THE CHAIRMAN: Mr. Freidin, do you have
24 any difficulty with understanding what the Board is
25 requesting here?

1 MR. FREIDIN: I will tell you in a minute
2 my position on that.

3 THE CHAIRMAN: All right. Bear in mind
4 there may be species which are not subject to adverse
5 impacts. There is a further category, in essence.
6 When you look at the individual species within a forest
7 habitat, you may decide: Well, this is the type of
8 specie of rare plant that will not be adversely
9 impacted. That would then not appear in that column.

10 MR. FREIDIN: All right. Yes, on that
11 understanding, that is fine. We will give the
12 difference between adversely impacted and potentially
13 adversely impacted.

14 We are not sure that we are going to --
15 if we are to use any different term we will clarify it
16 in the answer.

17 MR. CASTRILLI: I am content, whatever
18 they want to characterize what it is they are going to
19 call their final column, that's fine, as long as the
20 blanks -- or the spaces that apply to plants in forest
21 habitats are dealt with.

22 MR. MARTEL: Can I ask Mr. Kenrick a
23 question, a two-part question.

24 With the inventory that you have, is this
25 made aware or is this recorded in such a fashion, for

1 example, that a manager making a decision with respect
2 to timber management takes into consideration the
3 species that is there and, to your knowledge, has any
4 species been wiped out in northern Ontario in the
5 recent past thus making it not just rare but extinct in
6 northern Ontario?

7 MR. KENRICK: I am not aware of one, but
8 I am probably the wrong person to ask that question to.

9 Whether this type of information is
10 available to those people that are working on forest
11 management plans, timber management plans, I believe
12 they are, offices have that atlas and I believe if they
13 wanted -- one of the types of informations is that
14 atlas includes range maps usually, but there is
15 specific location information and it may be down to lot
16 6, concession 3, on private land and that
17 information -- by accessing the computer records,
18 managers can get that information.

19 MR. MARTEL: And they use it in making
20 decisions?

21 MR. KENRICK: I am aware where -- I hate
22 to say it has been used as a source of data in all
23 instances, but they are aware of the sources and I know
24 places where it has been used, yes.

25 MR. CASTRILLI: Q. Mr. Kenrick, your

1 testimony has also been that the Ministry of Natural
2 Resources in cooperation with the Committee on the
3 Status of Endangered Wildlife in Canada have designated
4 ten plants as rare in the province and of these one
5 plant is known to occur in the area of the undertaking;
6 is that correct?

7 MR. KENRICK: A. I believe that was my
8 evidence.

9 Q. Yes, it is page 69, paragraph 3. And
10 can I assume that -- well, let me not assume anything,
11 let me ask you.

12 What is the qualitative difference
13 between the 542 rare plant species from the most
14 up-to-date and accurate treatment the atlas provides,
15 which you refer to at page 62, and the 10 rare plant
16 species referred to on page 69?

17 A. If I understood your question
18 correctly, I understand the definition of rare is the
19 same. I understand that the exercise of the National
20 Museum of Man used the COSEWIC definitions. I
21 understand the difference in status is that for plants
22 and others to be designated, given a designation in the
23 COSEWIC process, it goes through review and status
24 reports and those types of activities.

25 Hence, I would expect those numbers of

1 things that have been dealt with and designated under
2 COSEWIC to be a smaller list given its ongoing doing
3 status reports than is contained in the National Museum
4 of Man records.

5 Q. It might be, but 532 species
6 difference? The rare atlas was described by you on
7 page 62 in the following terms, the most up-to-date and
8 accurate treatment is that provided by the atlas.

9 Page 69, those 544 rare plant species
10 have become 10. My question to you is: What happened
11 to the other 532?

12 A. They have not yet been considered by
13 COSEWIC, I believe is the answer to that, and there has
14 not been the COSEWIC sponsored status reports done for
15 them. My understanding is that explains the difference
16 in the lists.

17 Q. Now, is Ontario a representative or
18 represented on COSEWIC?

19 A. Yes.

20 Q. And would Ontario be responsible for
21 in fact doing the status reports in Ontario?

22 A. In some cases, and you are getting a
23 little out of my league, I understand they are done by
24 some other agencies in some cases. We contract them,
25 if you will.

1 Q. I am sorry, what do you mean by other
2 agencies?

3 A. A person from the university may well
4 do the actual field work on the status report.

5 Q. Is that under contract to Ontario or
6 is that under contract to COSEWIC?

7 A. I am not sure.

8 Q. So you are saying there is a 532
9 species gap due to -- due to what? You have got a
10 plant gap here, Mr. Kenrick.

11 A. Yes, I appreciate that. COSEWIC, as
12 I understand it, is a national committee so I assume
13 they have similar lists for all provinces and
14 jurisdictions and my assumption is they can only do so
15 many of those status reports at any point in time.

16 And they are working away at other
17 estimates of rare plants, if you will, and I assume the
18 National Museum of Man information is some of the
19 information they have at their disposal in determining
20 where they are going to do a status report next.

21 Q. But within a particular province,
22 isn't it in fact the province of that province to make
23 the decision how quickly review of rare species of any
24 type are in fact going to be done?

25 I mean, Ontario is represented on COSEWIC

1 and I would doubt that British Columbia is going to do
2 the work for Ontario.

3 A. That's correct.

4 Q. So isn't it a function of how much
5 money Ontario is prepared to commit to doing the status
6 reports that determines or explains, in whole or in
7 part, why there is a 532 rare plant species gap?

8 A. If it is Ontario that funds it - and
9 I need clarification on that - yes, they would be done
10 at a pace at which Ontario is prepared to spend money
11 doing that type of activity.

12 Q. Thank you. Now, continuing the same
13 paragraph. Maybe we can shorten this up by my simply
14 asking you: Is the same factor at work when we compare
15 the 155 relatively few species of rare plants in forest
16 habitats in the area of the undertaking with the one
17 plant referred to in paragraph 3 on page 69?

18 A. I would say yes.

19 Q. Thank you. And this is just a
20 forward looking question in terms of which panel I
21 should be directing the question to. Which panel will
22 deal with the existence of guidelines, if any, for
23 mitigating the impact of timber management activities
24 on rare plant species?

25 A. I am not sure you are specific.

1 Q. No, it is really a question directed
2 to your counsel.

3 MR. FREIDIN: I am not aware of any
4 specific guideline that will be referred to of that
5 nature.

6 MR. CASTRILLI: Q. And, Mr. Kenrick, I
7 gather you are not aware of any such guidelines?
8 Sorry, the reporter can't hear a whisper.

9 A. No.

10 Q. Your answer is no?

11 A. No.

12 Q. Thank you. Now, Mr. Kenrick, we
13 asked you in another of our interrogatories -- I now
14 refer you to Interrogatory Question No. 9, in Exhibit
15 233.

16 Let me know when you have the page.

17 A. I have it.

18 Q. The second question we asked you
19 referring to your paragraph 4 on page 69 was, or
20 generally:

21 "What is the proportion of funding that
22 the Ministry of Natural Resources
23 allocates to non-game species programs as
24 compared to game species."

25 And the answer you provided is found

1 under item B on that page: And basically you say it is
2 impossible to dissect what you call consumptive versus
3 non-consumptive use management is that generally a fair
4 summary of the burden of your response?

5 A. Yes, I could provide an illustration
6 that might illustrate that if it's helpful.

7 Q. Well, perhaps we can come back to the
8 illustration, but that is the burden of your answer 'is
9 that right?

10 A. Correct.

11 Q. Now, I believe you have been provided
12 with a copy of an article by Mr. Edwards, Wildlife
13 Management for Non-Consumptive Use?

14 A. Yes.

15 Q. You have had an opportunity to look
16 at that article?

17 A. I read it last night.

18 MR. CASTRILLI: Mr. Chairman, I would
19 like to make this the next exhibit.

20 THE CHAIRMAN: Exhibit 236.

21 ---EXHIBIT NO. 236: Article entitled: Wildlife
22 Management for Non-Consumptive
Use.

23 THE CHAIRMAN: The record might as well
24 show that Dr. Edwards was previously a part-time member
25 of the Environmental Assessment Board.

1 MR. CASTRILLI: I had no idea.

2 THE CHAIRMAN: Not that that has any
3 bearing, other than of a factual piece of information.

4 MR. FREIDIN: I am just wondering whether
5 we could be advised as to what expertise Mr. Edwards
6 had.

7 THE CHAIRMAN: Dr. Edwards was basically
8 a physicist and teaches advanced physics at the Royal
9 Military College at Kingston but, in addition to that,
10 he is a noted ornithologist in the province, and I
11 believe is certainly a member of ornithology
12 organizations and has personally, to my understanding -
13 this is by the way of hearsay - seen most of the
14 species of certainly rare birds in the world.

15 He travels extensively to countries all
16 over the world to see species in their wild habitat.
17 He is -- I believe it would be fair to say, Mr. Freidi,
18 that he is a noted authority on ornithology.

19 MR. CASTRILLI: Q. Now, Mr. Kenrick I
20 would like to direct your attention personally, just to
21 get a sense of what this paper was about.

22 It was an address given by Dr. Edwards on
23 June 15th, 1988 at the the 52nd Federal/Provincial
24 Wildlife Conference on the issue of whether the current
25 direction of wildlife management in Canada is outdated.

1 I just wanted to refer you to page 6 --
2 sorry this is exhibit 236. The second full paragraph
3 on page 6 states as follows. I am going to be reading
4 from page 6 on to page 7. Dr. Edwards notes:

5 "If you look at the Wildlife Branch of
6 Ontario's Ministry of Natural Resources
7 for example, you can find about 5 policy
8 programs for game species including: A
9 trapping program with a senior biologist
10 and 3 support staff; a moose program with
11 a biologist and 3 support staff; a deer
12 program with a biologist and 1 support; a
13 small game program with a biologist and
14 1 support."

15 Dr. Edwards then says, et cetera.

16 "There is, however, only 1 non-game
17 biologist but no policy program."

18 It goes on to state:

19 "I don't have a budget comparison
20 available but I think it most likely that
21 more than 85 per cent of the budget is
22 allocated primarily to game species.
23 This only leaves less than 15 per cent
24 for non-game species. It is clear
25 that the Wildlife Branch of MNR

1 concentrates heavily on managing a very
2 small portion of the fauna of Ontario
3 mainly the game species. Only 1
4 permanent employee, their non-game
5 biologist has the responsibility for all
6 the vertebrate, non-fish species in
7 Ontario except for the less than 100
8 species of wildlife which can be legally
9 hunted or trapped in Ontario. Besides
10 the 3 vertebrate non-game species, she is
11 also responsible for all of the
12 endangered species and the plant species
13 which are not merchantable timber species
14 and the peregrine re-introduction
15 program."

16 The next paragraph states:

17 "I think you will have to agree that in
18 this one agency, which may or may not be
19 typical, there is a serious imbalance."

20 Mr. Kenrick, my question to you is: Do
21 you agree with that assessment?

22 A. I would like to comment on it and I
23 think there is elements of it that I do and elements
24 that I don't.

25 Q. Please do so.

1 A. There seems to be a going back and
2 forth here between level of staffing and budgets first
3 of all.

4 I am not sure -- I wouldn't agree that
5 there is only one permanent employee, a non-game
6 biologist who has responsibility for, if you will,
7 non-game interests.

8 That is a reflection of main office
9 co-ordination and what it very much leaves out -- it is
10 also the reason that a person writing this makes
11 comments about the budget but also says I don't have a
12 budget comparison available. I am not questioning the
13 general thread of this, what I am question is there is
14 a lot of non-game activity that goes on out in the
15 field that isn't under a specific non-game budget.

16 It is the reason we have trouble
17 answering the question, it is the reason this author
18 has trouble getting data to back his conclusion up. On
19 two counts: I can recall doing surveys for sand hill
20 cranes and tundra swans up the Hudson Bay coast but
21 that wouldn't be captured under some kind of a vote
22 that said non-game, so it would be very difficult to
23 capture those.

24 We have funding that is spent through the
25 Community Wildlife Involvement Program that goes toward

1 management of non-game species and that is hard to
2 capture. There is funding that is spent under the
3 Renewable Resource Research Grant Program - I was just
4 looking at the list last week - and some of the
5 elements under that are non-game in nature. It is hard
6 to capture it.

7 The general conclusion -- I am not sure
8 it is fair, therefore, to count out number of staff
9 bodies sitting in one office in Toronto and make
10 general observations about the adequacy of the program
11 provincially. If the point being made here is that
12 society's concern with the non-game portion of our
13 programs is changing, I would agree it is an evolving
14 process.

15 I would also advise you that I understand
16 the non-game program policy there is a reference here
17 here to a program I believe the quote is:

18 "...but no policy program."

19 That is under review at the current time
20 in response to those kinds of concerns that we are
21 aware are going on around us.

22 For that reason, I am inclined to agree
23 with some of the conclusions. I think we are being
24 responsive to the point that is being made here. I
25 think the data that -- while, the conclusion may be

1 logical and I think there is some support for it, the
2 way he strung his argument together here, I have some
3 troubles with.

4 MR. CASTRILLI: Well, I am getting close
5 to the point where I gather we are going to break for
6 the day?

7 THE CHAIRMAN: You might as well finish
8 your line of questioning with this document.

9 MR. CASTRILLI: Q. Let me just ask you
10 then to focus on -- you will recall that we have been
11 asking this question since Panel 1. In fact, you note
12 you gave a similar response in Panel 1 -- or not you in
13 particular but someone else from the Ministry, I assume
14 Mr. Douglas.

15 Does it not behoove the Ministry to
16 contemplate sorting out a way in its budgetary program
17 to identify precisely how many resources are going to
18 non-game versus game rather than simply say we have an
19 \$18-million budget as you say in the response to our
20 Interrogatory Question 9, and that it is impossible to
21 dissect it.

22 Is that not something that the Ministry
23 should be striving to in fact be able to identify?

24 MR. KENRICK: A. In some regards it
25 would be nice from a very practical point that tells me

1 I get my allocation under a heck of a lot more codes,
2 little numbers which gives me less flexibility.

3 I don't know whether there is some
4 restriction in terms of the accounting systems, as to
5 how fine we can break our budgets down. I just don't
6 know the answer to that.

7 Q. All right. Well, let me posit with
8 you the reason why I am asking the question because I
9 am not really -- well, let me ask you one more question
10 and then I will tell you why I am asking the question
11 and ask you to comment on that.

12 Now, the rest of that paragraph goes on
13 to note that:

14 "There are less than 100 species of
15 wildlife which can be legally hunted or
16 trapped in Ontario."

17 Do you agree with that?

18 A. Yes.

19 Q. And then the paragraph goes on to
20 state:

21 "There are at least --"

22 Well, it says 300 vertebrate non-game
23 species. Do you accept that figure?

24 A. For the purpose of your question I
25 will take your and the author's word for it.

1 Q. So that your answer is yes, you
2 accept it?

3 A. Yes.

4 Q. And then there are also endangered
5 species which I presume are not included in the 300
6 vertebrate non-game species category; is that right?

7 A. I suggest you ask the author; he
8 wrote it I didn't.

9 Q. Well, what is your understanding; do
10 you agree or disagree?

11 A. Those appear to be ballpark figures
12 that I think I agree with.

13 Q. Thank you. And then there are also
14 plants species which are non-merchantable timber; is
15 that right.

16 A. That's correct.

17 Q. And then there is a peregrine
18 re-introduction program. Now, do you agree with those,
19 the existence of those programs?

20 A. Yes.

21 Q. Now, the issue that I am trying to
22 focus your attention on is the question of: Let's
23 assume for the moment that Mr. Edwards is right, that
24 more or less your budget allocation is 85/15, let's
25 assume for the purposes of this discussion that is

1 accurate.

2 Would that not have an impact - and I
3 mean an adverse impact - on the ability of the Ministry
4 of Natural Resources to in fact conduct inventories or
5 census on flora and fauna population levels of non --
6 well, of non-game species. Let's just keep it to
7 fauna.

8 A. Limits on budgets curtail our ability
9 to do inventories on a great many things.

10 Q. And allocations you decide to make as
11 a corporate policy decision make further limitations;
12 is that not correct?

13 Yes or no?

14 A. Given that my understanding - and
15 perhaps someone else could better answer this - is that
16 basically it is the legislature that eventually
17 allocates us our money.

18 Q. Well now, you are the Ministry or you
19 are the agency that comes to the legislature and says:
20 Here is what we want to have an allocation for in
21 global terms. They don't approve your work plans. You
22 make the decisions how you are going to allocate what
23 the government -- or, excuse me what the legislature
24 decides to give you; isn't that correct.

25 A. To some extent, yes.

1 Q. To some extent.

2 A. I have never been involved in that
3 part of the process. You are a little out of my
4 league. Would you like to ask your question again?

5 Q. Yes. What impact -- would you not
6 agree that MNR's decisions on how it will allocate
7 funding between game and non-game will impact its
8 ability to - and I mean adversely impact its ability -
9 to conduct inventories and census on non-game species?

10 A. Generally, yes.

11 MR. CASTRILLI: Thank you.

12 Mr. Chairman, this would be an
13 appropriate place to adjourn.

14 THE CHAIRMAN: Very well. Thank you, Mr.
15 Castrilli. Thank you, panel.

16 --- (Panel withdraws)

17 THE CHAIRMAN: Ladies and gentlemen, we
18 are intending to hand out the finalized version of the
19 procedural rulings dealt with this morning. I was
20 advised a few minutes ago that the photocopy machine
21 had temporarily broken down, but it may be up and
22 running. I would ask you, if you would like, to stop
23 by the reading room down the hall before you leave the
24 hotel to pick up a copy of the finalized version.

25 The Board is also directing the court

1 reporters to copy out, in full, the full text of the
2 ruling so that they appear in the transcripts and, of
3 course, are available to people who are using the
4 transcripts at the various depositories across the
5 province.

6 The Board will endeavor also to
7 distribute copies of that ruling to all parties on the
8 party list. So you may find in the next two or three
9 days that you receive an additional copy of that which
10 you are going to pick up today.

11
12 ENVIRONMENTAL ASSESSMENT BOARD

13
14 Proposed Class Environmental Assessment by
15 the Ministry of Natural Resources
16 for Timber Management on Crown Lands in Ontario

17
18 IN THE MATTER OF Section 12(2) of the Environmental
19 Assessment Act (R.S.O. 1980, c. 140), as amended

20
21 - and -

22
23 IN THE MATTER OF a Notice by the Honourable Jim
24 Bradley, Minister of the Environment, requiring
25 the Environmental Assessment Board to hold a

1 hearing with respect to a Class Environmental
2 Assessment (No. NR-AA-03) of an undertaking by the
3 Ministry of Natural Resources for the activity of
4 timber management on Crown Lands in Ontario

5 - and -

6
7 IN THE MATTER OF Notices of Motion brought by
8 Forests for Tomorrow and the Ontario Forest
9 Industries Association/Ontario Lumber
10 Manufacturer's Association for procedural orders
11 relating to the above application

12
13 PROCEDURAL RULINGS

14
15 Forests for Tomorrow and the Ontario Forest Industries
16 Association/Ontario Lumber Manufacturer's Association
17 (OFIA/OLMA) presented separate motions to the Board
18 dealing with procedural matters for which a return date
19 for the hearing of both motions was fixed for Thursday,
20 September 1st, 1988.

21
22 In addition, the Ministry of Natural Resources (MNR)
23 submitted a proposal in an attempt to bridge the intent
24 of both motions. The Ministry's proposal, contained in
25 a letter dated August 26th, with the consent of all

1 parties, was heard first.

2
3 Prior to dealing with the proposal put forward by MNR
4 it may be of assistance to briefly set out the relief
5 requested by Forests for Tomorrow and OFIA/OLMA.

6
7 Forests for Tomorrow sought an order requiring that:

8 a) following the completion of the hearing of the Panel
9 VII evidence of the Proponent, the Board adjourn the
10 hearing to February 1st, 1989 or to a date no earlier
11 than 60 days after all witness statements, studies and
12 reports of the Proponent have been served and filed;
13 and

14 b) an amendment to the Board's earlier procedural
15 directive to require that interrogatories be filed no
16 earlier than 40 days before a witness panel of the
17 Proponent is to commence examination-in-chief with
18 replies to such interrogatories to be served on all
19 parties no later than 10 days prior to the commencement
20 of a panel's evidence.

21
22 OFIA/OLMA sought an order requiring all parties
23 intending to file witness statements to deliver all of
24 their witness statements, studies and reports within 60
25 days of the completion of the hearing of the evidence

1 of the Proponent, and before the commencement of the
2 hearing of the evidence of the OFIA/OLMA.

3
4 The Board indicated at the outset in a prepared
5 statement that it was not prepared to consider any
6 request for a lengthy adjournment of the hearing unless
7 it could be assured that the hearing time lost would
8 not be added onto the overall number of hearing days.
9 As well, the Board indicated that it would approach
10 these motions with the intention of using this
11 opportunity to review procedures now in place in order
12 to ensure that the remaining evidence to be placed
13 before the Board for its consideration is presented in
14 a more efficient manner.

15
16 It was apparent to the Board that parties opposed to
17 various aspects of the Proponent's application were
18 concerned with their inability to obtain an overall
19 appreciation of the Ministry's case. In this regard a
20 number of the parties cited the fact that, although the
21 environmental assessment documents and the agency
22 review thereof had been filed earlier in the
23 proceedings, much of the evidence upon which the
24 Proponent relied was in the form of witness statements
25 as required by the Board's Rules of Practice and

1 Procedure, or contained in supplementary documentation
2 referred to by the witnesses.
3

4 Although the Board's earlier Procedural Directives
5 specify that evidence relating to a particular witness
6 statement shall not be adduced at the hearing itself
7 unless the witness statement has been first served upon
8 those parties receiving full-time correspondence, at
9 least 70 days in advance of the witnesses being called
10 to present evidence, this does not appear to provide
11 the parties in opposition with a sufficient basis upon
12 which to focus their limited resources, given MNR's
13 staggered schedule for releasing witness statements.
14

15 These difficulties are compounded by the fact that MNR
16 has indicated that it will be presenting its evidence
17 over an extended period of time by means of some 17
18 separate witness panels, many of which with various
19 aspects of the same issue in more than one panel.
20

21 Moreover, it has also become apparent at this stage in
22 the proceedings that a substantial portion of the
23 supporting evidence upon which MNR relies is not
24 contained in the environmental assessment filed as
25 Exhibit #4, but rather in the appendices to the witness

1 statements or in supplementary documentation related
2 thereto.

3
4 Counsel for Forests for Tomorrow and a number of other
5 parties stated to the Board that it was impossible for
6 any meaningful scoping of issues to take place prior to
7 having an opportunity to review the evidence upon which
8 the Proponent intended to rely in its entirety, as they
9 had no real idea as to whether or not the Proponent
10 intended to address a particular issue in one of the
11 later witness panels.

12
13 The Board is cognizant of the fact that the nature of
14 this application is such that parties cannot be
15 realistically said to be opposed to or, for that
16 matter, in support of all aspects of the Proponent's
17 case.

18
19 In fact, it is likely that all of the parties will find
20 both areas of agreement and areas of disagreement, and
21 it is the Board's view that full and complete
22 production of the various facts, reports and other
23 evidence upon which the Proponent relies will enhance
24 the opportunity for the parties to identify at an early
25 stage areas of both agreement and disagreement.

1
2 Counsel for OFIA/OLMA, in the course of arguing his
3 motion, outlined the potential difficulties for the
4 industry in the event that he was required to present
5 evidence at the conclusion of the Proponent's case,
6 without having the opportunity of knowing the
7 allegations of those parties in opposition, who may be
8 leading evidence of inappropriate and environmentally
9 unsound timber harvesting and regeneration practices by
10 member companies. Inasmuch as OFIA/OLMA, having been
11 identified as parties in general agreement with the
12 Proponent's position and not entitled to a right of
13 reply, it might well be necessary for counsel to
14 canvass all issues potentially affecting the industry
15 in the absence of any knowledge as to which specific
16 issues would later be raised by those in opposition.

17
18 MNR led off the discussion developed after extensive
19 consultation with several of the other parties,
20 including those whose motions were before the Board, by
21 presenting its proposals to the Board. The salient
22 parts of this proposal may be summarized as follows:

23
24 a) During the month of September, 1988, MNR will
25 provide witness statements for Panels VIII, IX, and X,

1 identifying the appropriate 30-40 day periods for the
2 receipt of interrogatories. The time periods referred
3 to herein would run from the distribution date of the
4 particular witness statement.

5
6 b) The previously agreed-upon adjournment for the month
7 of October would commence on or about September 29th,
8 1988.

9
10 c) The Board would reconvene in Thunder Bay on November
11 1st for the completion of the evidence and
12 cross-examination of Panel VII.

13
14 d) The week of November 21st, 1988 would be utilized by
15 the Board for a site visit to the Great Lakes/St.
16 Lawrence Forest Region.

17
18 e) After completion of the Panel VII evidence, the
19 hearing would adjourn until February 1st, 1989.

20
21 f) During the month of December, 1988, MNR would
22 provide witness statements for Panels XI, XII, XIII and
23 XIV, again with the appropriate dates for the receipt
24 of interrogatories running from the day of delivery of
25 the particular witness statement.

1
2 g) During the month of January, 1989, MNR would provide
3 witness statements for the remaining Panels, being
4 Panels XV, XVI and XVII. Under MNR's proposal, all of
5 its witness statements would be in the hands of all
6 parties receiving full-time correspondence prior to
7 February 1st, 1989. The statements for Panels VIII, IX
8 and X along with answers to interrogatories for these
9 Panels, will have been in the hands of all parties as
10 at February 1st, 1989 for at least four months.

11
12 h) On February 1st, 1989 the hearing would reconvene,
13 commencing with the evidence of Panel VIII and
14 continuing thereafter with the presentation of the
15 remainder of the Proponent's evidence.

16
17 In addition, MNR undertook prior to the completion of
18 its case to provide a concise summary of the decision
19 which MNR is seeking from the Board including proposed
20 terms and conditions to all parties.

21
22 Prior to the completion of MNR's case, all other
23 parties who intend to propose terms and conditions of
24 approval would be required to file a formal statement
25 of the proposed terms and conditions at a time to be

1 fixed by the Board.

2
3 In an attempt to meet the concerns of OFIA/OLMA, MNR
4 proposed that any person who intended to make specific
5 allegations of fact, which are intended to show
6 inappropriate and environmentally unsound timber
7 management practices by any person, would give adequate
8 notice of that intention and of the facts upon which
9 they will rely in advance of presenting this evidence.

10
11 Lastly, MNR proposed that all parties required to file
12 witness statements would be required to do so within a
13 specified period of time prior to the presentation of
14 the evidence contained in such statements.

15
16 Counsel speaking on behalf of Forests for Tomorrow
17 indicated his client's concurrence with MNR's proposal,
18 with the exception of those provisions requiring any
19 person who intends to make specific allegations of
20 fact, which are intended to show inappropriate and
21 environmentally unsound timber management practices, to
22 give advance notice thereof and of the facts upon which
23 they will rely. Mr. Castrilli, in response to this
24 concern on the part of OFIA/OLMA, suggested instead
25 that the Board might consider granting a limited right

1 of reply in response to a specific allegation. In this
2 regard reference was made to the "Dubin Aviation Safety
3 Inquiry", which adopted a similar procedure related to
4 particularized allegations against specific individuals
5 or companies.

6
7 In addition, counsel for Forests for Tomorrow indicated
8 that his clients would be prepared to file a set of
9 terms and conditions on a "Without Prejudice" basis,
10 provided that responses to all interrogatories and
11 outstanding undertakings have been delivered and
12 fulfilled up to the point in time specified for the
13 delivery of said terms and conditions.

14
15 Although counsel for Forests for Tomorrow referred at
16 length to an alleged breach by the Proponent of Section
17 2 of Regulation 205-87 and also Section 7 of the
18 Environmental Assessment Act, the withdrawal of his
19 motion in favour of the proposal put forward by MNR
20 (subject to the qualifications hereinbefore set out)
21 rendered it unnecessary for the Board to deal with this
22 particular issue. The Board, however, specifically
23 sought and received the assurance from Mr. Castrilli
24 That MNR's proposal met the material concerns of his
25 clients up to the present time, and therefore Forests

1 for Tomorrow would be precluded from raising the same
2 objections at a subsequent point in the proceedings.
3

4 Mr. Hunter, on behalf of Nishnawbe-Aski Nation and
5 Windigo Tribal Council, was in support of several parts
6 of the MNR proposal as well, and suggested that a
7 limitation of oral presentation by the Ministry of its
8 evidence be imposed allowing no more than two days per
9 witness panel.
10

11 Mr. Hunter opposed the motion brought on behalf of the
12 OFIA/OLMA and did not concur with the suggestion of
13 affording those parties a limited right of reply to
14 deal with specific allegations against specific
15 individuals or companies, but rather for the Board to
16 consider an appropriate remedy should circumstances
17 necessitating the same arise at some point later in the
18 proceedings.
19

20 In addition, Mr. Hunter was of the view that parties in
21 opposition should not be required to enter into a form
22 of scoping exercise or to provide draft terms and
23 conditions until such time as MNR has produced all of
24 its evidence and presented its case within a fixed
25 period of time.

1
2 Counsel for the Ministry of the Environment likewise in
3 general supported the proposal by MNR, subject to a
4 number of suggested refinements.
5

6 In particular, Mr. Campbell indicated that it might not
7 be necessary from his client's point of view to have
8 MNR's concise summary of the decision MNR is seeking
9 from the Board, including their proposed terms and
10 conditions, await the completion of Panel XV's
11 evidence; however, all other parties should not be
12 required to present draft terms and conditions until
13 after the completion of Panel XV.
14

15 Counsel for the Ministry of the Environment also agreed
16 that the concerns expressed by the OFIA/OLMA could be
17 addressed with a limited right of reply, although
18 parties should be encouraged to give OFIA notice of
19 specific incidents upon which they intend to refer to
20 in their evidence, if at all possible.
21

22 The Board does not intend to restate the positions
23 taken by other parties who made submissions relative to
24 the motions before the Board, as these are set out in
25 the transcripts of these proceedings; however, it

1 wishes to state that all submissions were carefully
2 considered by the Board in the course of its
3 deliberations.
4

5 In making the following rulings, the Board has taken
6 into account the concerns of the parties, the public
7 and the Board and weighed these concerns against the
8 necessity of observing the principles of procedural
9 fairness, while at the same time exercising procedural
10 initiatives available to the Board to narrow the issues
11 effectively and to rationalize this hearing process.
12

13 To this end, the Board is prepared to introduce a
14 mandatory form of scoping, founded upon a principle of
15 full disclosure as early as possible in the hearing
16 process. The Board remains unconvinced that the
17 parties themselves will embark upon a meaningful
18 scoping exercise on their own and, accordingly, will
19 provide the necessary assistance or guidance in this
20 regard.
21

22 The rulings hereinafter set out are therefore made with
23 respect to the specific proposals put forward by MNR in
24 its letter dated August 26th, 1988 and with respect to
25 the motion brought before the Board by the OFIA/OLMA.

1 The Board notes the withdrawal by Mr. Castrilli of his
2 motion brought on behalf of Forests for Tomorrow.

3
4 1. MNR WITNESS STATEMENTS

5
6 MNR shall deliver its witness statements for the
7 following witness panels and serve the same upon the
8 Board and all parties receiving full-time
9 correspondence in accordance with or in advance of the
10 deadlines contained in the following schedule:

11
12 (a) During the month of September, 1988 - Panels VIII,
13 IX and X.

14
15 (b) During the month of December, 1988 - Panels XI,
16 XII, XIII and XIV.

17
18 (c) During the month of January, 1989 - Panels XV, XVI
19 and XVII, together with all further witness
20 statements necessary to complete MNR's case.

21
22 (d) At the time of delivering each witness statement,
23 MNR shall provide a notice to the parties receiving
24 the same indicating the appropriate time period
25 allowed for the receipt of interrogatories in

1 accordance with the provisions of paragraph 2
2 hereinafter set out.

3
4 All witness statements shall contain an executive
5 summary of not more than 10 pages in length and shall
6 include reference to all supplementary documentation or
7 reports to be referred to or relied upon by MNR,
8 including specific page numbers.

9
10 2. INTERROGATORIES RELATIVE TO MNR WITNESS STATEMENTS

11
12 (a) Parties receiving witness statements from MNR shall
13 have 40 days from the date of service to submit
14 interrogatories provided that, where more than one
15 witness statement is delivered within a particular
16 10 day period, the party receiving the said
17 multiple witness statements shall be allowed an
18 additional period of 10 days within which to submit
19 written interrogatories.

20
21 (b) MNR shall have 15 days from the date upon which it
22 receives written interrogatories to provide its
23 written answers to same and answers to
24 interrogatories shall be served upon all parties
25 receiving full-time correspondence forthwith.

1
2 3. ADJOURNMENTS
3

4 The Board agrees to adjourn the hearing at the request
5 of the parties for the following periods for the
6 purpose of allowing MNR the necessary time to prepare
7 and distribute its witness statements in accordance
8 with the schedule established above:
9

10 (a) The previously agreed-upon adjournment for the
11 month of October, 1988 shall commence on September
12 30th, 1988.
13

14 (b) The Board shall reconvene in Thunder Bay on
15 November 1st, 1988 for the purpose of hearing MNR's
16 Panel VII evidence.
17

18 (c) The week of November 21st, 1988 shall be utilized
19 by the Board for the purpose of a site visit to the
20 Great Lakes/St. Lawrence Forest Region.
21

22 (d) After completion of the Panel VII evidence, the
23 hearing shall be adjourned until February 1st, 1989
24 at which time the hearing of evidence with respect
25 to Panel VIII shall commence.

1
2 4. DRAFT TERMS AND CONDITIONS OF APPROVAL
3

4 (a) MNR

5 MNR shall provide to the Board and to all parties
6 on the most current parties list, by the conclusion
7 of the evidence given by Panel X, a concise written
8 summary of the decision which MNR is seeking from
9 the Board with respect to the application,
10 including draft proposed terms and conditions of
11 approval.
12

13 (b) Other Parties Receiving Full-Time Correspondence

14 All other parties receiving full-time
15 correspondence shall provide the Board with
16 proposed draft terms and conditions of approval by
17 the conclusion of MNR's case, and said draft terms
18 and conditions of approval shall be distributed by
19 the Board to all other parties on the most current
20 parties list forthwith upon receipt thereof.
21

22 (c) It is understood that all proposed terms and
23 conditions of approval may be submitted upon a
24 "Without Prejudice" basis and may be subject to
25 later revision if the same should become necessary.

1
2 5. SUBMISSIONS OF WITNESS STATEMENTS RELATIVE TO MEMBER
3 COMPANIES OF OFIA/OLMA
4

5 (a) OFIA/OLMA shall distribute all of its witness
6 statements to the Board and parties receiving
7 full-time correspondence prior to the completion of
8 MNR's case with the OFIA/OLMA's first witness
9 panel's statement having been delivered at least 60
10 days prior to the completion of MNR's case.
11

12 (b) Parties receiving witness statements from OFIA/OLMA
13 shall have 40 days from the date of service to
14 submit interrogatories provided that, where more
15 than one witness statement is delivered within a
16 particular 10 day period, the party receiving the
17 said multiple witness statements shall be allowed
18 an additional period of 10 days within which to
19 submit written interrogatories.
20

21 (c) OFIA/OLMA shall have 15 days from the date upon
22 which it receives written interrogatories to
23 provide its written answers to same and answers to
24 interrogatories shall be served upon all parties
25 receiving full-time correspondence forthwith.

1
2 (d) Parties who intend to present evidence and are
3 required to file witness statements are directed to
4 provide counsel for OFIA/OLMA with a concise
5 summary of the issues they intend to address in
6 their evidence as they relate to member companies
7 of OFIA/OLMA, (not to exceed 10 pages in length)
8 within 10 days of the conclusion of MNR's Panel XV
9 evidence, or sooner if possible.
10

11 (e) In the event that allegations are made by parties
12 in opposition with respect to the practices of
13 OFIA/OLMA member companies of which OFIA/OLMA did
14 not receive notice prior to the calling of its
15 evidence, the Board shall consider granting
16 OFIA/OLMA a limited right of reply to rebut any
17 such allegations. Any such limited right of reply,
18 if granted, shall be confined to only those
19 allegations of the nature referred to above.
20

21 6. SUBMISSION OF WITNESS STATEMENTS OF OTHER PARTIES
22

23 (a) All other parties in opposition required to deliver
24 witness statements, with the exception of Forests
25 for Tomorrow, which is scheduled to present its

1 evidence immediately following those parties in
2 support of MNR's application, shall deliver same to
3 the Board and other parties receiving full-time
4 correspondence prior to the completion of Forests
5 for Tomorrow's case on a date to be fixed by the
6 Board.

7
8 (b) Parties in support of MNR's application are
9 required to deliver witness statements, other than
10 OFIA/OLMA, shall deliver their witness statements
11 to the Board and other parties receiving full-time
12 correspondence at least 60 days prior to the
13 completion of OFIA/OLMA's case, on a date to be
14 fixed by the Board.

15
16 (c) Forests for Tomorrow shall present its evidence
17 immediately following parties in support of the
18 Proponent and shall deliver its witness statements
19 to the Board and parties receiving full-time
20 correspondence prior to the completion of the
21 presentation of evidence by those parties in
22 support of MNR's case, on a date to be fixed by the
23 Board.

24
25 (d) Parties receiving witness statements shall have 40

1 days from the date of service to submit
2 interrogatories provided that, where more than one
3 witness statement is delivered within a particular
4 10 day period, the party receiving the said
5 multiple witness statements shall be allowed an
6 additional period of 10 days within which to submit
7 written interrogatories.
8

9 (e) The party to whom the interrogatory is directed
10 shall have 15 days from the date upon which it
11 receives written interrogatories to provide its
12 written answers to same and answers to
13 interrogatories shall be served upon all parties
14 receiving full-time correspondence forthwith.
15

16 (f) Parties submitting witness statements in accordance
17 with paragraph 6 shall have the right to deliver
18 supplementary witness statements, if necessary,
19 provided that any such supplementary witness
20 statements are delivered at least 60 days in
21 advance of the party presenting evidence on matters
22 covered by any supplementary witness statement.
23

24 (g) In the event that supplementary witness statements
25 are delivered in accordance with the provisions of

1 paragraph 6(e), then the procedure for filing
2 interrogatories relative to the supplementary
3 witness statements shall be the same as is set out
4 in paragraphs 6(c) and (d).
5

6 7. SCOPING OF ISSUES
7

8 (a) Counsel for all parties represented by counsel are
9 directed to consult on an ongoing basis with a view
10 towards identifying and reaching agreement upon
11 issues which are not in dispute and, accordingly,
12 need not be addressed at the hearing either in the
13 evidence-in-chief or in cross-examination.
14

15 (b) The Board shall, commencing with MNR's Panel VIII
16 evidence and each panel thereafter, prior to
17 hearing evidence-in-chief, conduct a brief review
18 of the issues raised in the witness statement for
19 that panel to ascertain whether or not specific
20 issues are in dispute.
21

22 (c) Where the Board is satisfied that specific issues
23 are not in dispute or are, in the Board's view,
24 fully and effectively set out in the witness
25 statement and/or its supporting documentation or

1 reports, the Board shall give specific directions
2 as to whether oral evidence-in-chief will be
3 required relative to said issues.
4

5 (d) In the event that the Board rules at the conclusion
6 of the aforesaid scoping session that further oral
7 evidence-in-chief will not be required, the
8 witnesses shall, however, be available to be
9 cross-examined in the normal manner on any matters
10 referred to in the witness statement or supporting
11 documentation thereto.
12

13 (e) The scoping exercise referred to in this paragraph
14 7 shall also apply with respect to the evidence to
15 be addressed by parties other than MNR who are
16 represented by counsel and designated as receiving
17 full-time correspondence.
18

19 8. INCONSISTENCIES WITH PRIOR PROCEDURAL RULINGS AND/OR
20 DIRECTIVES
21

22 To the extent that any previously issued ruling or
23 directive of the Board is inconsistent with the
24 provisions of any ruling and/or directive made herein,
25 the rulings and/or directives set out above shall

1 prevail.

2

3 Dated at THUNDER BAY this 16th day of SEPTEMBER, 1988.

4

5 THE CHAIRMAN: The Board will now adjourn
6 until September 26th, at 1:00 p.m. at which time we
7 will continue with Mr. Castrilli's cross-examination.

8 Thank you.

9 ---Whereupon the hearing adjourned at 1:00 p.m., to
10 reconvene on Tuesday, September 26th, 1988,
commencing at 1:00 p.m.

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